FILED
JAN 4 1972
E. ROBERT SEAVER, CLERK

# In the Supreme Court of the United States

No. 71-867

OCTOBER TERM, 1971

TOM SIMICH, ET AL,
*Petitioners*

vs.

DOBROSAV MILISAVLJEVIC, ET AL,
*Respondents*

TOM SIMICH, ET AL,
*Petitioners*

vs.

ST. SAVA SERBIAN EASTERN ORTHODOX CHURCH OF CLEVELAND, OHIO
*Respondent*

TOM SIMICH, ET AL,
*Petitioners*

vs.

ST. SAVA SERBIAN EASTERN ORTHODOX CHURCH OF CLEVELAND, OHIO, ET AL,
*Respondents*

## VOLUME I

**Petition for Writ of Certiorari**
**To the Supreme Court of The State of Ohio**

KOTTLER & DANZIG
Harry Kottler and
Randall D. Luke,
*Of Counsel*

570 Union Commerce Building
Cleveland, Ohio 44115
*Attorneys for Petitioners*

STRANGWARD, MARSHMAN, LLOYD & MALAGA
W. P. Strangward,
*of Counsel*

1405 National City Bank Building
Cleveland, Ohio 44114

JAMES EASLY

Terminal Tower
Cleveland, Ohio 44113

*Attorneys for Respondents*

## TABLE OF CONTENTS


| | Page |
|---|---|
| Citations to Opinions Below | 2 |
| Jurisdiction | 2 |
| Questions Presented | 3 |
| Constitutional Provisions | 4 |
| Statement of the Case | 5 |
| Presentation of the Federal Questions | 11 |
| Reasons for Granting the Writ | 16 |
| 1. There is great current public interest in the Constitutional Limitations and Powers of Civil Courts to resolve disputes, involving church property of hierarchical denominational churches particularly with respect to the Serbian Orthodox Church. | 16 |
| 2. The decision of the Court of Appeals of Ohio is contrary to decisions of this Supreme Court interpreting the First and Fourteenth Amendments to the Constitution of the United States. | 18 |
| 3. Within the religious freedom principles, embodied in the religion clauses of the First Amendment to the Constitution of the United States, there exists a Right of Church Membership to denominational continuity within the established framework of hierarchical denominational church systems. | 20 |
| Conclusion | 23 |
| Appendix A: Entries in the consolidated cases on appeal | |
| Journal Entry of the Court of Common Pleas of Cuyahoga County (October 23, 1969) | 24 |
| Memorandum to Lawyers of the Court of Appeals for the Eighth Judicial District (May 6, 1971) | 25 |

## TABLE OF CONTENTS


Page

Supplemental Memorandum to Lawyers of the Court of Appeals for the Eighth Judicial District ..... 37

Supplemental Dissenting Opinion of Dudley F. Smith, J. of the Court of Appeals for the Eighth Judicial District (July 12, 1971) ..... 40

Judgment Entry of the Court of Appeals for the Eighth Judicial District (June 30, 1971) ..... 45

Order of the Supreme Court of Ohio Dismissing Appeal as of Right (September 22, 1971) ..... 46

Order of the Supreme Court of Ohio Overruling Motion to Certify (September 22, 1971) ..... 46

Order of the Supreme Court of Ohio Denying Rehearing (October 13, 1971) ..... 46

Appendix B: Entries in companion cases

*St. Sava Serbian Orthodox Church of Cleveland, Ohio vs. Milan Naperta, et al* (Court of Common Pleas No. 795,014; Court of Appeals No. 27520) ..... 47

Opinion of the Court of Common Pleas of Cuyahoga County (May 3, 1965) ..... 47

Journal Entry of the Court of Common Pleas of Cuyahoga County (May 26, 1965) ..... 76

Opinion of the Court of Appeals for the Eighth Judicial District (April 7, 1966) ..... 83

Journal Entry of the Court of Appeals for the Eighth Judicial District (October 10, 1966) ..... 87

Journal Entry Nunc Pro Tunc of the Court of Appeals for the Eighth Judicial District ..... 89

## TABLE OF CONTENTS


| | Page |
|---|---|
| *Savko Jovanovic, et al vs. Tom Simich, et al* (Court of Common Pleas No. 790,246; Court of Appeals Nos. 26957 and 28526) | 91 |
| Separate Findings of Fact and Conclusion of Law of the Court of Common Pleas of Cuyahoga County (January 23, 1964) | 91 |
| Journal Entry of the Court of Common Pleas of Cuyahoga County (January 23, 1964) | 93 |
| Opinion of the Court of Appeals for the Eighth Judicial District in Case No. 26957 (March 22, 1966) | 93 |
| Journal Entry of the Court of Appeals for the Eighth Judicial District in Case No. 26957) (May 26, 1966) | 103 |
| Journal Entry of the Court of Common Pleas of Cuyahoga County (March 30, 1967) | 104 |
| Journal Entry of the Court of Appeals for the Eighth Judicial District in Case No. 28526 (December 21, 1967) | 110 |
| Appendix C: Entries in related cases | |
| *Serbian Eastern Orthodox Congregation of St. George vs. Serbian Eastern Orthodox Congregation of St. George* | 111 |
| Opinion of the Superior Court of New Jersy (October 20, 1967) | 111 |
| Judgment Entry of the Superior Court of New Jersey (October 25, 1967) | 132 |
| Opinion of the Superior Court of New Jersey, Appellate Division (June 13, 1969) | 134 |
| Order of the Supreme Court of New Jersey Denying Petition for Certification (September 30, 1969) | 138 |
| Order of the Supreme Court of the United States Denying Petition for Writ of Certiorari (March 2, 1970) | 139 |

## TABLE OF CONTENTS


| | Page |
|---|---|
| *Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio vs. Vladislav Kelemen, et al* | 139 |
| Opinion of the Supreme Court of Ohio (March 4, 1970) | 139 |
| Opinion of the Court of Appeals for the Ninth Judicial District (August 11, 1971) | 147 |
| Journal Entry of the Court of Appeals for the Ninth Judicial District (October 12, 1971) | 154 |
| Appendix D: Cases Involving the same Controversy as the Cases on Appeal | 156 |
| Appendix E: Pertinent Provisions of Instruments of Church Government | 157 |
| Pertinent Provisions of the By-Laws of the St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio (1955) | 157 |
| Pertinent Provisions of the Constitution of the Serbian Orthodox Diocese in the United States of North America and Canada (1939) | 160 |
| Pertinent Provisions of the Constitution of the Serbian Orthodox Church (1947) | 164 |
| Appendix F: (Volume II) Instruments of Church Government | |
| Articles of Incorporation of Serbian Orthodox Church, St. Sava | 1 |
| By Laws of the St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio | 2 |
| Constitution of the Serbian Orthodox Diocese in the United States of North America and Canada | 31 |
| Constitution of The Serbian Orthodox Church | 86 |

# TABLE OF AUTHORITIES


| Cases. | Page |
|---|---|
| *Cantwell vs. Connecticut*, 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900 (1940) | 21 |
| *Eldership vs. Church of God at Sharpsburg*, 396 U. S. 367, 24 L. Ed. 2d 582, 90 S. Ct. 499 (1970) | 14, 16, 17, 18, 19, 22 |
| *Engle vs. Vitale*, 370 U. S. 421, 8 L. Ed. 2d 601, 82 S. Ct. 1261 (1962) | 21 |
| *Kedroff vs. St. Nicholas Cathedral*, 344 U. S. 94, 97 L. Ed. 120, 73 S. Ct. 143 (1952) | 21 |
| *Kreshik vs. St. Nicholas Cathedral*, 363 U. S. 190, 4 L. Ed. 2d 1140, 80 S. Ct. 1037 (1960) | 20 |
| *Presbyterian Church in the United States vs. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 21 L. Ed. 2d 658, 89 S. Ct. 601 (1969) | 14, 16, 17, 18, 19, 22 |
| *Serbian Eastern Orthodox Congregation of St. George vs. Serbian Eastern Orthodox Congregation of St. George* Cons. Case Nos. C-2824-64 and C-3603-64 Sup. Ct. of N. J. (1967); affirmed per curiam 106 N. J. Super. 22, 254 A. 2d 119 (1969); certification denied 54 N. J. 516; 257 A. 2d 113 (1969); certiorari denied 397 U. S. 961; 25 L. Ed. 2d 254, 90 S. Ct. 994 (1970) | 14, 16, 17, 19 |
| *Serbian Orthodox Church vs. Kelemen*, 21 Ohio St. 2d 154, 256 N. E. 2d 212, (1970) | 18, 19 |

## TABLE OF AUTHORITIES


| | Page |
|---|---|
| *Shelley vs. Kramer*, 334 U. S. 1, 92 L. Ed. 1161, 68 S. Ct. 836 (1948) | 20 |
| *Watson vs. Jones*, 80 U. S. (13 Wall.) 679, 20 L. Ed. 66 (1871) | 3, 15, 17, 19, 20, 23 |


### Constitutions


| | |
|---|---|
| Constitution of the United States: | |
| Amendment I | 3, 4, 11, 12, 13, 15, 18, 20, 21, 22, 23 |
| Amendment XIV | 4, 5, 11, 12, 13, 15, 18, 21, 23 |

# IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1971
No.

TOM SIMICH, et al,

*Petitioners*

vs.

DOBROSAV MILISAVLJEVIC, et al,

*Respondents*

ST. SAVA SERBIAN EASTERN ORTHODOX CHURCH OF CLEVELAND, OHIO

*Respondents*

vs.

TOM SIMICH, et al,

*Petitioners*

TOM SIMICH, et al,

*Petitioners*

vs.

ST. SAVA SERBIAN EASTERN ORTHODOX CHURCH OF CLEVELAND, OHIO, ET AL,

*Respondents*

## PETITION FOR WRIT OF CERTIORARI

**To The Supreme Court of the State of Ohio.**

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Ohio entered in the above-entitled case on October 13, 1971.

## CITATIONS TO OPINIONS BELOW.

The Journal Entry under date of October 23, 1969 of the Court of Common Pleas of Cuyahoga County has not been officially reported. It is presented in Appendix A, *infra*, p. 24.

An opinion under date of May 6, 1971 of the Court of Appeals for the Eighth Judicial District has not been officially reported. It is presented in Appendix A, *infra*, p. 25.

A supplemental opinion under date of June 30, 1971 of the Court of Appeals for the Eighth Judicial District has not been officially reported. It is presented in Appendix A, *infra*, p. 37.

A supplemental dissenting opinion under date of July 12, 1971 by the Honorable Dudley F. Smith, J., of the Court of Appeals for the Eighth Judicial District has not been officially reported. It is presented in Appendix A, *infra*, p. 40.

The judgment under date of June 30, 1971 resulting from the opinion and supplemental opinion referred to above is presented in Appendix A, *infra*, p. 45.

The orders of the Supreme Court of Ohio under date of September 22, 1971, overruling Petitioners' Motion to Certify the Record of the Court of Appeals and dismissing Petitioners' Appeal as of right from the Court of Appeals, are presented in Appendix A, *infra*, p. 46. The order of the Supreme Court of the State of Ohio under date of October 13, 1971, denying Petitioners' motion for rehearing is printed in Appendix A, *infra*, p. 46.

## JURISDICTION.

The judgment of the Court of Appeals of the Eighth Judicial District of the State of Ohio was entered on June 30, 1971. Appendix A, *infra*, p. 45.

The Supreme Court of the State of Ohio on September 22, 1971, dismissed Petitioners' appeal to that Court, Appendix A, *infra*, p. 46.

The Supreme Court of the State of Ohio denied Petitioners' Motion for rehearing on October 13, 1971, Appendix A, *infra*, p. 46.

The jurisdiction of this Court is invoked under 28 U. S. C. A. § 1257(3).

## QUESTIONS PRESENTED.

1. Provided that no determination of religious doctrine or tenents is involved, can civil courts inquire into matters of church government for the purpose of identifying the appropriate governing bodies of hierarchical denominational churches in resolving church property use disputes?

2. Provided that no determination of religious doctrine and tenents is involved, can civil courts consider the interrelationship and legal effect of Articles of Incorporation, By-Laws, and Diocesan and Church Constitutions together with such other instruments as shall manifest church organization and government pursuant to an inquiry into church polity for the purpose of identifying the governing bodies of hierarchical denominational churches in resolving church property use disputes?

3. For Constitutional purposes in resolving church property use disputes, are "neutral principles of law" any principles of law which do not involve a determination of religious doctrine or tenets in their application, and which therefore do include the legal doctrine as enunciated in *Watson vs. Jones*, 80 U. S. (13 Wall.) 679, 20 L. Ed. 666 (1871) to the extent that the same can be applied without determining religious doctrine and tenets?

4. Do the guarantees of prevention of the establishment of religion and the free exercise thereof together with the religious freedom principles embodied therein, as contained in the First Amendment to the Constitution of the United States, and the guarantees of protection of property, due process of law, and equal protection of the laws.

as contained in the Fourteenth Amendment to the Constitution of the United States, protect the rights of members of a church to denominational continuity within the established framework of the particular hierarchical denominational church system with which the same is connected?

5. Did the decision by the Court of Common Pleas of Cuyahoga County, that the Serbian Orthodox Church together with its hierarchical authorities is the appropriate Church and governing body to which St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio is connected, require the determination of religious doctrine and tenets or an unconstitutional inquiry into church government in violation of the First and Fourteenth Amendments to the Constitution of the United States?

## CONSTITUTIONAL PROVISIONS.

The Constitutional provision which Petitioners contend has been violated by the judgment of the Court of Appeals of the Eighth Judicial District of the State of Ohio is the following:

Amendment I of the Constitution of the United States:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * * "

Amendment XIV of the Constitution of the United States, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws."

## STATEMENT OF THE CASE.

From its inception as a religious society, St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio was founded in, and is part of the Serbian Orthodox Church with its headquarters in Belgrade, Yugoslavia.

The St. Sava Serbian Eastern Orthodox Church congregation incorporated on January 17, 1928 under the corporate name of "Serbian Orthodox Church, St. Savo". The Articles of Incorporation definitively set forth the purpose for which the corporation was formed:

> "THIRD. The purpose or purposes for which said corporation is formed are: not for profit, but to promote the cause of the Christian Religion, to provide a place of worship for its members, *to be conducted in accordance with the rules and laws of the Serbian Orthodox Church*, to receive, hold and disburse gifts, bequests and other funds for said purposes, to own and maintain suitable real estate and buildings for its purposes and to do all things necessary and incident thereto." (Emphasis ours)

The By-Laws were adopted in 1955 and clearly reflect that St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio was an "integral and organic part of the Serbian Orthodox Diocese of the United States of North America and Canada." The Diocesan Constitution together with the Constitution of the Serbian Orthodox Church clearly reflect that the Serbian Orthodox Diocese of the United States of North America and Canada (and therefore St. Sava) is "ecclesiastically-judicially an organic part of" the Serbian Orthodox Church and is subject to all "the statutes and rules" which regulate the Serbian Orthodox Church. (See pertinent parts of the By-Laws, the Diocesan Constitution and the Constitution of the Serbian Orthodox Church set forth in Appendix E, *infra*, p. 157. For the convenience

of the Supreme Court of the United States, the Articles of Incorporation, the By-Laws, Diocesan Constitution and the Constitution of the Serbian Orthodox Church are reproduced in full in Volume II, Separate Appendix F).

Being connectional in structure, the Serbian Orthodox Church is a hierarchical church, governed by its highest judicatory authority, the Holy Assembly of Bishops with its seat in Belgrade, Yugoslavia. The Holy Assembly of Bishops is comprised of all the Bishops of the Serbian Orthodox Church.

The Hierarchy of the Serbian Orthodox Church consists of the Patriarch, the Holy Assembly of Bishops and the Holy Synod of Bishops. The Patriarch and the Holy Synod of Bishops are elected by the Holy Assembly of Bishops from among themselves.

Next in the order of hierarchical authority are the Dioceses, which are situated in various geographical divisions throughout Yugoslavia and the world. Each Diocese, as an integral and constituent part of the Serbian Orthodox Church, is governed by a Bishop of the Serbian Orthodox Church together with related Diocesan tribunals and councils.

Next in order of Hierarchical authority are the various Church-School Congregations, situated within the geographical limits of each Diocese. Each Church-School Congregation is a constituent part of the Diocese in which it is situated and is subject to the authority of the Diocese and the higher authorities of the Serbian Orthodox Church. St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio is a typical example of such Church-School Congregations.

In accordance with the Constitution of the Serbian Orthodox Church, the Holy Assembly of Bishops, by decree in 1963, abolished the Serbian Orthodox Diocese in the United States of North America and Canada and in

its place created three new Dioceses; of which, The Serbian Orthodox Eastern American and Canadian Diocese is one. St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio is now one of the Church-School Congregations which are ecclesiastically and administratively an organic and subordinate part of The Serbian Orthodox Eastern American and Canadian Diocese.

Also in 1963, Dionisje Milivojevic, formerly the Diocesan Bishop of the abolished Serbian Orthodox Diocese in the United States of North America and Canada, was removed as a Diocesan Bishop of the Serbian Orthodox Church, and in 1964 he was defrocked through ecclesiastical-judicial proceedings of the Holy Assembly of Bishops of the Serbian Orthodox Church in Belgrade, Yugoslavia for breach of Church discipline. Following these proceedings, Dionisje and his followers denounced Serbian Orthodoxy, publicly expressed disaffiliation from and refusal to adhere to the Rules, Canons, Laws and Hierarchical Decrees of the Serbian Orthodox Church, and thereafter joined in a schismatic association, claiming control over all of the property of the Serbian Orthodox Church in the United States and Canada.

Following these decisions, certain members of the various Serbian Orthodox Church-School Congregations in the United States remained loyal to the Serbian Orthodox Church and continued to abide by its Constitution and Canonical laws. Others rebelled – choosing to follow the defrocked Dionisje, who declared that the abolished Diocese was still in existence, that he was its head, and that the abolished Diocese together with those who followed him owed no allegiance to, and were not bound by the decisions of the Holy Assembly of Bishops of the Serbian Orthodox Church.

This rebellion rapidly spread throughout the United States and Canada, infecting the lives of all Serbs living on the North American Continent (Appendix D, *infra*, p. 156).

Respondents herein are members and active proponents of the Dionisjean schismatic association. Respondents by reason of such schismatic association have no status whatsoever in the Serbian Orthodox Church. By their own conduct, actions and statements, Respondents have renounced the Serbian Orthodox Church, and its Hierarchical Government. As a consequence, Respondents have been declared to be Excommunicants of the Serbian Orthodox Church by its Hierarchical Authorities.

Petitioners herein are members of St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio and adhere strictly to the Rules, Canons, Laws and Hierarchical Decrees of the Serbian Orthodox Church. Petitioners have been confirmed as loyal members of the Serbian Orthodox Church by its Hierarchical Authorities.

As a direct result of these events, Petitioners and Respondents have been engaged continuously in litigation since October, 1963.

The first lawsuit in chronology is *Sarko Jovanovic et al vs. Tom Simich et al.*, filed in October of 1963, Cuyahoga County Common Pleas Court Case No. 790,246 (Appendix B., *infra*, p. 91), and Eighth District Court of Appeals Case Nos. 26957 (Motion to Certify denied) (Appendix B, *infra*, p. 93), and 28526 (Appendix B, *infra*, p. 110). In substance, that case involved a court supervised election, at which, a majority of individuals, found to be members of the congregation of St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, elected a slate of officers (Respondents herein) to administer the corporate body of St. Sava Church. This resulted in the paradoxical situation that the corporate body, holding title to, and administering the property of the congregation of the St. Sava Serbian Orthodox Church of Cleveland, Ohio became subject to the self-perpetuated control of Respondents herein, who themselves are excommunicants of the Serbian Orthodox Church and who encourage and permit former priests and

bishops of the Serbian Orthodox Church (now defrocked through ecclesiastical-judicial proceedings of the Serbian Orthodox Church) to hold "purported" religious services in and on the Church property in desecration thereof.

The second lawsuit in chronology is *St. Sava Serbian Orthodox Church of Cleveland, Ohio vs. Milan Naperta et al*, filed in March of 1964, Cuyahoga County Common Pleas Court Case No. 795,014 (Appendix B, *infra*, p. 47) and Eighth District Court of Appeals Case No. 27,250 (Appendix B, *infra*, p. 83) (Motion to Certify denied). In that case the Common Pleas Court after five weeks of trial found *inter alia on May 20, 1965* that:

1. St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio is an incorporated religious society of the Serbian Orthodox faith.

2. St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio was a part of the Serbian Orthodox Diocese of the United States of North America and Canada with its See in Libertyville, Illinois.

3. That Diocese operated under a written constitution approved by higher authority, i.e. the Holy Assembly of Bishops of the Serbian Orthodox Church in Belgrade, Yugoslavia.

4. The Diocese in turn is subordinate to the authority of the Serbian Orthodox Church in matters ecclesiastical and especially in respect to:

   (a) the creation, naming, division and abolition of of the separate dioceses, and

   (b) the election or appointment of Bishops to head the several dioceses at home and abroad.

5. On May 10, 1963, the Holy Assembly of Bishops decreed that the Diocese of the United States of North America and Ganada be abolished, and that three new Dioceses be created along geo-

graphical lines; of which, the Serbian Orthodox Eastern American and Canadian Diocese is one.

These findings of fact were fully and fairly litigated by Petitioners and Respondents and now stand as having been unreversed and finally determined.

Next in chronology are the three cases at bar which were consolidated and heard upon Petitioners' Motions for Summary Judgment on October 17, 1969.

In support of their Summary Judgment Motions, Petitioners filed various affidavits, together with attached exhibits, including specifically, by means of incorporation by reference, the unreversed findings of fact and law finally adjudicated and determined by the Common Pleas Court in the case of *St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio vs. Milan Naperta et al*, Case No. 795,014 (Appendix B, *infra*, p. 76).

Substantively, all three of the cases at bar, *inter alia*, raised the issue of the relationship of St. Sava Serbian Orthodox Church of Cleveland, to the Serbian Orthodox Eastern American and Canadian Diocese and to the Serbian Orthodox Church as governed and administered by the Holy Assembly of Bishops in Belgrade, Yugoslavia.

The Court of Common Pleas of Cuyahoga County found no genuine issue of material fact and rendered judgment in all three cases as a matter-of-law on October 23, 1969 (Appendix A, *infra*, p. 24) for Petitioners.

Respondents appealed therefrom to the Court of Appeals for the Eighth Judicial District of the State of Ohio. The Court of Appeals, in a two-to-one dicision, reversed the judgment of the Court of Common Pleas and remanded these three cases to that Court for further proceedings according to law.

The Court of Appeals rendered its decision by way of a Memorandum to Lawyers, dated May 6, 1971 (Appendix A, *infra*, p. 25) and a Supplemental Memorandum to Law-

yers, dated June 30, 1971 (Appendix A, *infra*, p. 37). A Supplemental Dissenting Opinion was filed July 12, 1971 (Appendix A, *infra*, p. 40), and the Judgment of the Court was journalized on June 30, 1971 (Appendix A, *infra*, p. 45).

The Judgment of the Court of Appeals was based upon a determination that the Common Pleas Court committed prejudicial error in that its Judgment was in violation of the First and Fourteenth Amendments to the Constitution of the United States and contrary to the Summary Judgment law of the State of Ohio.

From this Judgment, Petitioners appealed as a Matter of Right and by way of a Motion to Certify to the Supreme Court of Ohio. On September 22, 1971, the Supreme Court of Ohio *sua sponte* dismissed the Appeal as of Right for the reason that no substantial Constitutional question was determined to exist in these three cases (Appendix A, *infra*, p. 46), and overruled Petitioners' Motion to Certify (Appendix A, *infra*, p. 46). On October 13, 1971, that Court denied Petitioners' Motion for rehearing (Appendix A, *infra*, p. 46).

It therefore is apparent that Petitioners are appealing from the Judgment and Opinion of the highest Court of the State of Ohio from which a Judgment or Opinion was or could have been obtained, and Petitioners now present to the Supreme Court of the United States this Petition for Writ of Certiorari.

## PRESENTATION OF THE FEDERAL QUESTIONS

According to Ohio procedure, Respondents' Appeal to the Court of Appeals was on questions of law. The Opinion and Journal Entry, resulting from the Court of Appeals, for the first time denied Petitioners' Constitutional Rights as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States. Specifically, Petitioners Constitutional Rights were denied with this language:

"We are of the opinion that the ruling indicated in the final judgment entered by the Trial Court in Cases Nos. 30049, 30057, and 30059 constitutes a violation of the First Amendment and the Fourteenth Amendment of the United States Constitution." (Appendix A, *infra*, p. 37).

"We are of the opinion that the answer to the question of which church the various parties are members of and which church's authority they are subject to would involve the determination of religious law and usage and require the determination of doctrinal questions and require extensive inquiry into religious polity, which inquiry is in violation of the First Amendment to the United States Constitution." (Appendix A, *infra*, p. 38).

"In further support of the proposition that civil courts cannot constitutionally determine matters of church government, we quote from a per curiam opinion of the Ohio Supreme Court in Church v. Kelemen, 21 Ohio St. 154 (Page 159):

> "That court arrived at legal conclusions relative to the organizational relationship, powers and duties of the Mother Church concerning the appointment of a bishop for the Diocese of the United States and Canada, and the Mother Church's attempt to eliminate the diocese. While we recognize that these matters of internal church organization are chronic sources of disagreement for the parties and are frequently mentioned in the pleadings, briefs and arguments, the findings of the Court of Appeals are unnecessary and immaterial to a neutral law inquiry utilizing principles of law developed for use in all property disputes. Further, the Hull Memorial case offers the strong suggestion that civil courts cannot constitutionally determine matters of church government. In that case, the

court's opinion cites with approval Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U. S. 94, 97 L. Ed. 120, where, at page 116, the court said:

> "* * * The opinion (Watson v. Jones, 80 U. S. 679, 20 L. Ed. 666) radiates * * * a spirit of freedom for religious organizations, and independence from secular control or manipulation — in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. Freedom to select the clergy, where no improper methods of choice are proven, we think must now be said to have federal constitutional protection as part of the free exercise of religion against state interference."

"Answers to these questions are not necessary to the determination of church property ownership and control since the property is in the name of an Ohio corporation and neutral principles of law are applicable.

The Kelemen case cited above also touches upon this point when it states:

> 'The control of the name and property of the Serbian Orthodox Church congregation of St. Demetrius of Akron, Ohio must be determined only by reference to the provisions of the Code of Regulations and By-Laws of the corporation not for profit, the corporate laws of this state, and any other secular instruments not requiring the resolution of religious tenets or doctrine.'" (Appendix A, *infra*, pp. 39-40).

"This cause came on to be heard upon the transcript, Bill of Exceptions, Assignments of Error and Briefs, and arguments of counsel. This Court finds that the trial court committed prejudicial error in that said judgment is in violation of the First and Four-

fteenth Amendments of the United States Constitution and contrary to the Ohio laws on summary judgment." (Appendix A, *infra*, p. 45).

The Federal Questions herein first became apparent after the filing of the Opinion and Judgment of the Court of Appeals. It was then that Petitioners' Constitutional Rights first were denied.

Petitioners' first opportunity to raise the Federal Questions herein was in the Memorandum in Support of Jurisdiction, filed with Petitioners' request for a hearing before the Supreme Court of the State of Ohio.

In that Memorandum, Petitioners *inter alia* urged upon the Supreme Court of Ohio that:

1. The decisions of the Supreme Court of the United States in *Presbyterian Church in the United States vs. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 21 L. Ed. 2nd 658, 89 S. Ct. 601 (1969) and *Eldership vs. Church of God at Sharpsburg*, 396 U. S. 367, 24 L. Ed. 2d 582, 90 S. Ct. 499 (1970) do permit civil courts to inquire into matters of church government in resolving church property use disputes for the purpose of identifying the appropriate governing bodies of hierarchical denominational churches; provided that any such inquiry does not involve a determination of religious doctrine and tenets.

2. Predicated upon the authority of *Serbian Eastern Orthodox Congregation of St. George vs. Serbian Eastern Orthodox Congregation of St. George* Cons. Case Nos. C-2824-64 and C-3603-64 Sup. Ct. of N. J. (1967); affirmed per curiam 106 N. J. Super. 22, 254, A. 2d 119 (1969); certification denied 54 N. J. 516; 257 A. 2d 113 (1969); certiorari denied 397 U. S. 961; 25 L. Ed. 2d 254, 90 S. Ct. 994 (1970), and provided that no determination of religious doctrine and tenets is involved, civil courts can consider the inter-relationship and legal

effect of Articles of Incorporation, By-Laws, and Diocesan and Church Constitutions together with such other instruments as shall manifest church organization and government in resolving church property use disputes.

3. "Neutral Principles of Law" are *any* principles of law which do not involve a determination of religious doctrine or tenets in their application and which therefore includes the legal doctrine as enunciated in *Watson vs. Jones*, 80 U. S. (13 Wall.) 679, 20 L. Ed. 66 (1871) to the extent that the same may be applied without determining religious doctrine and tenets.

4. The guarantees of religious freedom and equal protection of the laws, as contained in the First and Fourteenth Amendments to the Constitution of the United States, protect the rights of a minority of church membership by preventing a majority thereof from using property of a church, connected with a hierarchical denominational church system, for religious purposes prohibited by the hierarchical authorities of such denominational church system for the reason that such a minority have the Constitutional Right to be protected in their peaceable enjoyment of public worship in the mode of the denomination with which the church is connected.

5. The determination, that the Serbian Orthodox Church together with its hierarchical authorities is the appropriate church and governing body to which St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio is connected, did not require the determination of religious doctrine and tenets or an unconstitutional inquiry into church government and organization.

The Supreme Court of Ohio, by its refusal to decide the questions presented, upheld the Judgment of the Court

of Appeals and by so doing decided these timely raised Federal Questions against Petitioners.

## REASONS FOR GRANTING THE WRIT.

1. There is great current public interest in the Constitutional Limitations and Powers of Civil Courts to resolve disputes, involving church property of hierarchical denominational churches particularly with respect to the Serbian Orthodox Church.

In at least four States, comprising Ohio, Indiana, Illinois and Pennsylvania, one or more cases exist involving the same schism within the Serbian Orthodox Church (Appendix D, *infra*, p. 156).

This Supreme Court of the United States refused to grant certiorari in *Serbian Eastern Orthodox Congregation of St. George vs. Serbian Eastern Orthodox Congregation of St. George* Cons. Case Nos. C-2824-64 and C-3603-64 Sup. Ct. of N. J. (1967); affirmed per curiam 106 N. J. Super. 22, 254 A. 2d 119 (1969); certification denied 54 N. J. 516; 257 A. 2d 143 (1969); certiorari denied 397 U. S. 961; 25 L. Ed. 2d 254, 90 S. Ct. 994 (1970) (Appendix C, *infra*, pp. 111-139).

In that case, which is identical to the three cases at bar, the end result was that the church property, involved in the dispute, was retained by adherents to the Serbian Orthodox Church for religious usage in conformance with decisions of the hierarchical authorities of that church.

The *St. George* cases were decided by the New Jersey Courts subsequent to the decisions of this Supreme Court in *Presbyterian Church in the United States vs. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 21 L. Ed. 2d 540, 89 S. Ct. 601 (1969) and *Eldership vs. Church of God at Sharpsburg*, 396 U. S. 367, 24 L. Ed. 2d. 582, 90 S. Ct. 499 (1970).

In the *St. George* cases, the New Jersey Courts properly recognized and inquired into the governmental

structure of the Serbian Orthodox Church and of the St. George Church-Congregation for the purpose of identifying the appropriate hierarchical denominational governing body thereof by considering the interrelationship and legal effect of the Articles of Incorporation,, By-Laws, Diocesan Constitution and Church Constitution together with other instruments manifesting the governmental organization of the Serbian Orthodox Church and of the St. George Church-Congregation (Appendix C, *infra*, pp. 111-132). That inquiry did not contravene the permissible constitutional parameters for church polity inquiries as set forth by this Supreme Court in the *Presbyterian Church and Church of God* cases.

In an era of social and religious disorder and ferment, manifested by extensive litigation engendered by widespread disregard of, and disrespect for society's established institutions, members of a hierarchical denominational church have a *Constitutional Right* to expect that the law will protect the denominational continuity of the hierarchical church with which they are associated.

In cases involving schismatic church disputes of hierarchical religious denominations, usually nation-wide in scope, a rule of law is required which will avoid unconstitutional inquiries into church doctrine and polity but which also will provide a stable, predictable and efficient standard for resolution of such disputes. *Watson vs. Jones*, 80 U. S. (13 Wall.) 679, 20 L. Ed. 66 (1871), having stood for a century as a simple, logical rule, promoting hierarchical denominational continuity, promotes peaceful reform within the framework of established hierarchial denominational church systems, but requires would-be radical reformers to disassociate themselves therefrom; thus discouraging fanatical, potentially violent, power struggles for control of church property.

In the three cases at bar, the decision of the highest Court in the State of Ohio, from which a decision could have been obtained, has resulted in upholding the radical

schizmatic, dissident element to the deteriment and denial of the *Constitutional Rights* of Petitioners. The decision of the Ohio Court is predicated upon an erroneous interpretation of the *Presbyterian Church* and *Church of God* cases; the result of which is a total abstract "hands-off" neutrality approach for resolving these disputes. Instead of providing a stable, predictable and efficient rule for resolution of these disputes, the approach of the Ohio Courts fosters religious anarchy and encourages fanatical power struggles for control of church property.

The application of a legal doctrine, predicated upon a total abstract neutrality approach, for resolution of these cases far exceeds the Constitutional parameters of the *Presbyterian Church* and *Church of God* cases. Such an application is an unconstitutional manifestation of judicial-state hostility toward the Serbian Orthodox Church and established hierarchical denominational church systems in general, and is a denial of Petitioners' free exercise of religion as guaranteed by the First Amendment to the Constitution of the United States.

Therefore, Petitioners submit that this Court, in keeping with its fundamental role as an interpreter of the Constitution of the United States, ought to grant the Writ and declare principles for the Courts of Ohio and all other States, delineating the Constitutional parameters of permissible inquiry into church polity for the purpose of identifying the appropriate governing bodies of hierarchical denominational church systems, and to judicially recognize a Constitutional right in church membership to denominational continuity within the framework of hierarchical denominational church systems.

2. The decision of the Court of Appeals of Ohio is contrary to decisions of this Supreme Court interpreting the First and Fourteenth Amendments to the Constitution of the United States.

The Court of Appeals based its decision in substantial part upon *Serbian Orthodox Church vs. Kelemen*, 21 Ohio

St. 2d 154, 256 N. E. 2d 212, (1970) (Appendix A, *infra*, pp. 39-40) (Appendix C, *infra*, p. 139). Both the Supreme Court of Ohio in the *Kelemen* case at p. 159 (Appendix C, *infra*, p. 144) and the Court of Appeals erroneously ruled that civil courts Constitutionally cannot inquire into matters of church government. Both Courts also erroneously assumed that "neutral principles of law" are equated only with traditional corporate and property law concepts, thereby excluding the doctrine, enunciated in *Watson vs. Jones*, as a neutral principle of law for resolution of the three cases at bar (Appendix A, *infra*, pp. 39-40) (Appendix C, *infra*, p. 145).

Contrary to the Court of Appeals and the Supreme Court of Ohio, a review of the *Presbyterian Church* and *Church of God* cases clearly reveals that inquiry into church government and organization for the purpose of identifying the appropriate hierarchical denominational governing body has the express constitutional approval of this Supreme Court, provided that such an inquiry does not involve a determination of church doctrine and tenets.

Predicated upon the authority of the *St. George* cases, the permissible Constitutional parameters of church polity inquiries include a consideration of the interrelationship and legal effect of Articles of Incorporation, By-Laws, and Diocesan and Church Constitutions together with such other instruments as manifest church governmental organization.

It is Petitioners' contention that the touchstone of an unconstitutional "extensive inquiry" is whether the same involves a determination of religious doctrine and tenets.

It is the further contention of Petitioners that the *Presbyterian Church* and *Church of God* cases stand for the proposition that any principles of law, which do not involve a determination of church doctrine and tenets in their application, are "neutral principles of law" within the constitutional intendment of this Supreme Court. Thus, the doctrine, enunciated in *Watson vs. Jones*, is a "neutral

principle of law" to the extent that the same may be applied without determining church doctrine and tenets. Likewise the utilization of traditional corporate and property law concepts are *not* "neutral principles of law" if their application involves a determination of church doctrine and tenets (see Supplemental Dissenting Opinion, Appendix A, *infra*, p. 44).

In the three cases at bar, no unconstitutional polity inquiry was involved when the Common Pleas Court simply determined that St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio is a member church of, and subject to the authority of the Serbian Orthodox Church, headquartered in Belgrade, Yugoslavia. The remainder of the Common Pleas Court Judgment, decreeing that the property of St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio shall be used only for those religious purposes as are determined by the hierarchical authorities of the Serbian Orthodox Church, followed directly therefrom as a matter-of-law by reason of the application of the legal doctrine enunciated in *Watson vs. Jones* (See Supplemental Dissenting Opinion, Appendix A, *infra*, p. 42).

3. Within the religious freedom principles, embodied in the religion clauses of the First Amendment to the Constitution of the United States, there exists a Right of Church Membership to denominational continuity within the established framework of hierarchical denominational church systems.

There is no doubt that state judicial action is "state action" for First Amendment Constitutional Right purposes. *Shelley vs. Kramer*, 334 U. S. 1, 92 L. Ed. 1161, 68 S. Ct. 836 (1948); *Kreshik vs. St. Nicholas Cathedral*, 363 U. S. 190, 4 L. Ed. 2d 1140, 80 S. Ct. 1037 (1960), and that the freedom of religion and free exercise clauses of the First Amendment together with the religious freedom principles embodied therein are made applicable to the

States by the Fourteenth Amendment: *Cantwell vs. Connecticut*, 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900 (1940); *Kedroff vs. St. Nicholas Cathedral*, 344 U. S. 94, 97 L. Ed. 120, 73 S. Ct. 143 (1952), and *Engle vs. Vitale*, 370 U. S. 421, 8 L. Ed. 2d 601, 82 S. Ct. 1261 (1962).

Petitioners assert that the First Amendment clauses, guaranteeing free exercise of religion and prevention of the establishment of religion, together with the Fourteenth Amendment all guarantee a Constitutional Right of church members to denominational continuity within the established framework of a particular hierarchical denominational church system.

Church property represents the tangible expression of a person's religious beliefs and the focus of his religious experience within the confines of his chosen denomination. When one becomes a member of a connectional church that is an "integral and organic" part of a denominational hierarchy, he does so with the rightful expectation that the church property will continue to be devoted to the religious purposes of such denomination and that the church property will continue as a tangible manifestation of his religious faith for worship therein according to the rules and laws of such denomination.

Judicial decisions disenfranchising members of a hierarchical denominational church, who maintain their historical hierarchical allegiance, stifle these expectations of denominational continuity. This stifling of expectations constitutes malevolent state-judicial interference with established hierarchical denominations and a denial of the free exercise of religion by the members thereof.

The guarantee of free exercise of religion includes the *Right* to Associate oneself with a hierarchical denominational church and the *Right* to expect that the law will protect the church property in its use in accordance with the decisions of the hierarchical authorities of such denomination. *But* that same guarantee does not include the right, of even a majority of the church membership,

to divert church property from its consecrated uses and to frustrate the denominational continuity of the church. Certainly the First Amendment gives all men the right to freely associate with the church of their choice and to freely disassociate therefrom when dissatisfied with its doctrines. *But* the rights of free exercise of dissatisfied members are limited solely to peaceful disassociation from the established church and do not encompass the denial of the free exercise of religion of other church members, who desire the preservation of the denominational ties of their church.

Therefore, the right of denominational continuity, emanating from the First Amendment, should be subject to protection from state judicial encroachment.

The primary effect of the decisions of the Ohio Courts is the judicial promotion of a new religious sect at the expense of an ancient, established hierarchical religious denomination. Such decisions, in effect, impair Petitioners' personal and property rights in and to church membership by authorizing the use of Petitioners' church in a manner hostile to the hierarchical religious denomination with which it is associated. The refusal of the Ohio courts to make the limited inquiry, required to recognize the historical association and connection of St. Sava Serbian Eastern Orthodox Church of Cleveland with the Serbian Orthodox Church, is a distortion of the *Presbyterian Church and Church of God* cases to the point of constituting a state-judicial manifestation of overt hostility towards the Serbian Orthodox Church and hierarchical denominational churches in general. Such a manifestation of hostility is precluded by the First Amendment.

As the Honorable Dudley F. Smith of the Court of Appeals stated in his Supplemental Dissenting Opinion (Appendix A, *infra*, pp. 44-45):

> "To allow a majority of a religious congregation, associated with a hierarchical denominational church, to divert church property to religious uses and pur-

poses prohibited by the hierarchical authorities of such denomination constitutes in and of itself the establishment of religion contrary to the First Amendment to the Constitution of the United States, amounts to a taking of property rights of the minority without due process of law in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States, and fosters religious anarchy.

## CONCLUSION.

For the foregoing reasons, Petitioners submit that the Ohio Courts have failed to accept and to apply the principles established by this Supreme Court and have departed from the doctrine enunciated in *Watson vs. Jones*. If these decisions of the Ohio Courts are permitted to stand, they effectively forestay the demise of hierarchical denominational church bodies as such in the State of Ohio. (See the Opinion and Judgment of the Court of Appeals for the Ninth Judicial District, State of Ohio, dated August 11, 1971 and October 12, 1971, respectively, in the *Kelemen* case on remand from the Ohio Supreme Court, Appendix C, *infra*, pp. 147, 154).

The questions presented here are of such widespread public importance and interest as to warrant the attention of this Supreme Court. Petitioners urge this Court to note probable jurisdiction and to grant this Petition for a Writ of Certiorari.

Respectfully submitted,

RANDALL D. LUKE OF
KOTTLER & DANZIG
*Counsel for Petitioners*

KOTTLER & DANZIG
570 Union Commerce Building
Cleveland, Ohio 44115
781-0800

## APPENDIX A: Entries in the cases on appeal.

### JOURNAL ENTRY OF THE COURT OF COMMON PLEAS OF CUYAHOGA COUNTY (October 23, 1969)

JACKSON, J.

These consolidated cases came on for hearing on October 17, 1969, upon the motion of Tom Simich, et al., for Summary Judgment. The Court finds that the opposing parties have been duly served and have entered an appearance in the above cases.

Upon studying all the material available in the cases the Court finds that the St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, is a member church of the Serbian Eastern Orthodox Church headquartered in Belgrade, Yugoslavia, and the Eastern American and Canadian Diocese.

The Court further finds that the Serbian Eastern Orthodox Church is hierarchical and episcopal in structure. The Court further finds that as a part of the hierarchy the St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio is subordinate to the authority of the Serbian Eastern Orthodox Church in matters ecclesiastical in nature.

The Court further grants a permanent injunction against any parties diverting or applying the real and personal property of St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio for any purpose other than advancing the Serbian Eastern Orthodox faith as set out and promulgated by the Serbian Eastern Orthodox Church with headquarters in Belgrade, Yugoslavia.

The Court further grants a permanent injunction against any parties carrying an action affecting the relationship of St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio to the Serbian Eastern Orthodox Church of Belgrade, Yugoslavia unless said change in relationship

is authorized by the ecclesiastical administrators of the Serbian Eastern Orthodox Church of Belgrade, Yugoslavia.

It Is Therefore Ordered, Adjudged and Decreed, that the Serbian Eastern Orthodox Church of Cleveland, Ohio is a member of the Serbian Eastern Orthodox Church with headquarters in Belgrade, Yugoslavia and subordinate to the authority of the said Serbian Eastern Orthodox Church in matters ecclesiastical in nature.

It Is Further Ordered that no party shall divert or apply the real and personal property of St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio for any purpose other than advancing the Serbian Eastern Orthodox faith as set out and promulgated by the Serbian Eastern Orthodox Church with headquarters in Belgrade, Yugoslavia.

It is further ordered that no party shall carry on any actions affecting the relationship of St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio to the Serbian Eastern Orthodox Church with headquarters in Belgrade, Yugoslavia unless said change is authorized by the ecclesiastical administrators of the said Serbian Eastern Orthodox Church.

Costs assessed against the plaintiffs in Case No. 842,626, against the defendants in Case No. 864,453 and against the defendants in Case No. 841,384.

Perry B. Jackson, J.

## MEMORANDUM TO LAWYERS OF THE COURT OF APPEALS FOR THE EIGHTH JUDICIAL DISTRICT (May 6, 1971)

COOK, P. J.

The causes before this court are on appeal on questions of law from the Common Pleas Court of Cuyahoga County and include six legal actions between the parties.

The oldest of the six actions is the case of *Jovanovic, et al. vs. Simich, et al.*, Court of Appeals No. 29280. The judgment in this action from which appellants, Simich, et al., appeal, was the overruling of an "application to set aside writ of execution" by the Common Pleas Court of Cuyahoga County.

The judgment sought to be put into effect by the "writ of execution", the vacation of which was refused by the court, stemmed from a special mandate of this court ordering the judgment and decree of the lower court to be carried into execution in Case No. 29280. The judgment of the lower court, ordered to be executed, recited the steps taken by the court in preparing for and conducting an election of officers of St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio and further indicated the results of said election.

No appeal from the judgment of this court was taken by appellants, Simich, et al., to the Ohio Supreme Court.

Subsequent to the issuance of the special mandate by this court several writs of execution were issued thereunder and after several months, the duly elected officers of the church corporation took over substantially all of the church property with the exception of the parish house.

A final writ of execution was filed to effect the taking over of the parish house by the duly elected corporate officers. It is the overruling of the motion by the appellants, Simich, et al., to vacate said writ of execution which is the subject of the appeal before this court, which is Court of Appeals Case No. 29280.

An execution will not ordinarily issue except to enforce a final judgment (21 Am. Jur. 27).

The final judgment in this instance which the writ of execution seeks to enforce concerns solely the election of new officers of St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio. There is nothing in said judgment

ordering anything directly concerning the possession of properties owned by said corporation.

It seems obvious to the court that the issuance of a writ of execution as to a judgment dealing with the election of corporate officers only is not the proper method for said officers to obtain possession of church property once they have been elected. Other legal remedies are available for that purpose.

Accordingly, the overruling of the motion to vacate the writ of execution was an abuse of discretion by the trial court and the judgment of the Court of Common Pleas in Case No. 29280 is reversed and remanded for further proceedings according to law.

The second oldest case before this court is Court of Appeals No. 30049, *St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio v. Tom Simich, et al.* This was an injunctive action seeking to enjoin the defendants from interfering with the duly elected corporate officers in the performance of their duties in the administration of the corporate assets.

A "motion to maintain the ecclesiastical status quo" was filed by the defendants appellees and granted by the trial court. The plaintiffs appellants have filed an appeal in this court from such interlocutory order in Case No. 29104.

This court dismisses the appeal in Case No. 29104 for the same reason that we dismiss the appeal in Case No. 29103.

The third oldest case before this court is *Simich, et al. vs. Milisavljevic, et al.*, Court of Appeals No. 30057. This case sought a declaratory judgment. A "motion to maintain the ecclesiastical status quo" was filed by the plaintiffs and granted by the trial court. The defendants have filed an appeal in this court from such interlocutory order in Case No. 29103.

An appeal on questions of law lies to a judgment or final order in an injunction proceeding (*Columbus Packing Co. v. State*, 100 Ohio St. 285) and the rules governing such appeals are applicable (2 O. Jur. 2d 545).

A preliminary or interlocutory order is not reversible on appeal on questions of law (2 O. Jur. 2d 598).

The prompt and orderly disposal of litigation is an object much to be desired, and the entertainment of appeals from various orders made by the trial court during the progress of the main action is not in pursuance of such object (*Squire v. Guardian Trust Co.*, 147 Ohio St. 1). Accordingly, in Court of Appeals Case No. 21903 we find for the appellee and dismiss the appeal.

The last case in point of time is Court of Appeals No. 30059 entitled *Simich, et al. v. St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, et al.*, seeking an injunction to restrain defendants from expelling the plaintiffs from the church corporation and from using the corporate property for any purpose contrary to the decrees of the Serbian hierarchy in Belgrade, Yugoslavia.

Motions for partial summary judgment were filed in Court of Appeals Cases Nos. 30057, 30049 and 30059. They were consolidated for the purpose of the motions for partial summary judgment by the Common Pleas Court of Cuyahoga County without objection of the parties.

The trial court granted the motion for a partial summary judgment and found that St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, is a member of the Serbian Eastern Orthodox Church headquartered in Belgrad, Yugoslavia, and the Eastern American and Canadian Diocese, that the Serbian Eastern Orthodox Church is hierarchical and episcopal in structure; that St. Sava is subordinate to the authority of the Serbian Eastern Orthodox Church in matters ecclesiastical in nature. The Court proceeded to grant a permanent injunction against any parties diverting or applying the property of St. Sava for

any purpose other than advancing the Serbian Eastern Orthodox faith as set out and promulgated by the Serbian Eastern Orthodox Church of Belgrade, Yugoslavia, and granted a permanent injunction against any parties carrying on action affecting the relationship of St. Sava to the Serbian Eastern Orthodox Church of Belgrade, Yugoslavia, unless said change in relationship is authorized by the ecclesiastical administrators of the Serbian Eastern Orthodox Church of Belgrade, Yugoslavia."

Pertinent parts of Revised Code Section 2311.041(b) state:

> "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions of the genuineness of papers or documents, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, previously filed in the action show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law . . ."

In the three Court of Appeals cases before the trial court, Cases 30057, 30049 and 30059, Simich, et al., by petition or cross-petition claim St. Sava is a part of the Serbian Eastern Orthodox Church headquartered in Belgrade, Yugoslavia, and the Eastern American and Canadian Diocese and St. Sava is subordinate to the authority of Serbian Eastern Orthodox Church of Belgrade, Yugoslavia, and the Eastern American and Canadian Diocese in matters ecclesiastical.

However, the parties Milisavljevic and St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, deny this relationship in their various pleadings. Affidavits E and A of the answer to the request for a summary judgment sworn to by Father Branko Kusonich and Milutin Ristich, president of the church corporation, say that St. Sava is not a member of the Serbian Eastern Orthodox Church of Belgrade, Yugoslavia, and the Eastern American

and Canadian Diocese but is instead a part of the Serbian Eastern Orthodox Diocese of the United States of America and Canada, an Illinois Corporate Diocese.

Therefore, the trial court committed prejudicial error in making the following two (2) findings of fact diametrically opposed to the pleadings and affidavit of the appellants:

1) That the defendant Church Corporation was a member of the "Eastern American and Canadian Diocese", one of the allegedly "three new dioceses".

2) That the new defendant Church Corporation is subordinate to the authority of the Serbian Orthodox Church in Yugoslavia in matters ecclesiastical in nature.

Obviously the trial court could not find that "there is no genuine issue as to any material fact."

Accordingly, we reverse the judgment of the trial court, render final judgment for the appellants on the motion for partial summary judgment and remand the cause to the trial court for further proceedings according to law.

In summary, this Court reverses the judgment and remands for further proceedings according to law in Court of Appeals Case No. 29280; dismisses Court of Appeals Cases Nos. 29103 and 29104; and reverses and renders final judgment for appellants on the motions for partial summary judgment, and remands same for further proceedings according to law Court of Appeals Cases Nos. 30057, 30049 and 30059.

Exceptions. Order see journal.

COOK, P. J., HOFSTETTER, J. CONCUR; SMITH, J. DISSENTS.

COOK, J. AND HOFSTETTER, J. OF THE 11TH APPELLATE DISTRICT AND SMITH, J. (RETIRED) OF

THE 6TH APPELLATE DISTRICT SITTING BY ASSIGNMENT IN THE 8TH APPELLATE DISTRICT.)

HOFSTETTER, J. (CONCURRING IN JUDGMENT):

The causes before this Court are on appeal on questions of law from the Common Pleas Court of Cuyahoga County and include six legal actions between the parties.

The oldest of the six actions is in the case of *Jovanovic et al., vs. Simich, et al.*, Court of Appeals No. 29280 (Common Pleas No. 790,246). Prior to the six cases in question, a long line of comparable cases involving similar interests were adjudicated. This Court of Appeals, at an earlier date, had issued a special mandate which was not appealed, ordering the judgment and decree of the lower court into execution. The judgment ordered executed required the election of new officers of St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, an Ohio corporation. There was nothing in said judgment which ordered anything that directly concerned the possession of properties owned or claimed to be owned by said corporation. The judgment of the lower court mandated to be executed recited the steps that had been taken by the lower court in preparing for and conducting an election of officers of St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, and further indicated the results of said election.

Subsequent to the issuance of the special mandate by the Court of Appeals, several writs of execution were issued thereunder and, after several months, the duly elected officers of the church corporation took over substantially all of the church property, with the exception of the parish house.

A final writ of execution was filed to effect the taking over of the parish house by the duly elected corporate officers. Appellant Simich moved the lower court to vacate this writ of execution. The lower court overruled appellant Simich's motion to vacate, and the order overruling said motion is the subject of Appeal No. 29280 before this Court.

An execution will not ordinarily issue except to enforce a final judgment (21 American Jurisprudence 27). To reiterate, in this instance, the final judgment sought to be enforced concerned solely the election of officers of St. Sava Serbian Eastern Orthodox Church of Cleveland. There was nothing in said judgment ordering anything to be done concerning the possession of properties owned by said corporation.

It seems obvious to the Court that the issuance of a writ of execution as to a judgment dealing with the election of corporate officers only is not the proper method for said officers to obtain possession of church property once they have been elected. Other legal remedies are available for that purpose.

Accordingly, the overruling of the motion to vacate the writ of execution was an abuse of discretion by the trial court and the judgment of the Court of Common Pleas in Case No. 29280 is reversed and remanded for further proceedings according to law.

The second oldest case before this Court is Court of Appeals No. 30049, *St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, vs. Tom Simich; et al.* This was an injunctive action seeking to enjoin the defendants from interfering with the duly elected corporate officers in the performance of their duties in the administration of the corporate assets.

A "motion to maintain the ecclesiastical status quo" was filed by the defendants appellees and granted by the trial court. The plaintiffs appellants have filed an appeal in this court from such interlocutory order in Case No. 29104. This Court finds for the appellees and dismisses this appeal in the Court of Appeals for the same reasons as will be noted in Court of Appeals Case No. 29103.

The third oldest case before this Court is *Simich, et al., vs. Milisavljevic, et al.*, Court of Appeals No. 30057. This case sought a declaratory judgment. A "motion to maintain the ecclesiastical status quo" was filed by the plaintiffs

appellees and granted by the trial court. The defendants appellants filed an appeal in this Court from such interlocutory order designated as Case No. 29103.

An appeal on questions of law lies to a judgment or final order in an injunction proceeding (*Columbus Packing Co. v. State*, 100 Ohio St. 285) and the rules governing such appeals are applicable (2 Ohio Jurisprudence 2d 545).

A preliminary or interlocutory order is not reversible on appeal on questions of law (2 Ohio Jurisprudence 2d 598).

The prompt and orderly disposal of litigation is an object much to be desired, and the entertainment of appeals from various orders made by the trial court during the progress of the main action is not in pursuance of such object (*Squire v. Guardian Trust Co.*, 147 Ohio St. 1). Accordingly, in Court of Appeals Case No. 29103, we find for the appellees and dismiss the appeal.

The last case in point of time is Court of Appeals No. 30059 entitled *Simich, et al., v. St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, et al.*, seeking an injunction to restrain defendants from expelling the plaintiffs from the church corporation and from using the corporate property for any purpose contrary to the decrees of the Serbian hierarchy in Belgrade, Yugoslavia.

Motions for partial summary judgment were filed in Court of Appeals Cases Nos. 30057, 30049 and 30059. They were consolidated for the purpose of the motions for partial summary judgment by the Common Pleas Court of Cuyahoga County without objection of the parties.

In the three Court of Appeals cases before the trial court, Cases Nos. 30057, 30049 and 30059, Simich, et al., by petition or cross-petition, claim St. Sava is a part of the Serbian Eastern Orthodox Church headquartered in Belgrade, Yugoslavia, and the Eastern American and Canadian Diocese, and St. Sava is subordinate to the authority of Serbian Eastern Orthodox Church of Belgrade, Yugoslavia,

and the Eastern American and Canadian Diocese in matters ecclesiastical.

However, the parties Milicavljevic and St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, deny this relationship in their various pleadings. Affidavits E and A of the answer to the request for a summary judgment sworn to by Father Branko Kusonich and Milutin Ristich, president of the church corporation, say that St. Sava is not a member of the Serbian Eastern Orthodox Church of Belgrade, Yugoslavia, and the Eastern American and Canadian Diocese, but is instead a part of the Serbian Eastern Orthodox Diocese of the United States of America and Canada, an Illinois corporate diocese.

In the opinion of this Court there is a genuine material issue of fact unresolved between the parties as to which parent organization St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, belongs, and, therefore, whose rules it must obey, but, and we adopt language from 21 Ohio St. 2d, page 159, *Serbian Orthodox Church v. Klemen*[*], while we recognize that these matters of internal church organization are chronic sources of disagreement for the parties and are frequently mentioned in the pleadings, briefs and arguments, the findings of the lower court are unnecessary and immaterial to a *neutral* law inquiry utilizing principles of law developed for use in *all* property disputes. Further, the *Hull memorial case* (*Presbyterian Church in the United States, et al., v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, et al.*, 393 U. S. 440) which served as the basis for the Ohio Supreme Court's thinking in *Serbian Orthodox Church v. Kelemen, supra*, offers the strong suggestion that civil courts cannot constitutionally determine matters of church government. It

[*] *Serbian Orthodox Church v. Kelemen* was decided March 4, 1970, by the Ohio Supreme Court after remand for further consideration by the Supreme Court of the United States in light of that Court's decision in Presbyterian Church in the *United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969), 393 U. S. 440.

must be further said, however, that the determination of these particular issues of fact would not be determinative of the principal question before the trial court, namely, who should have ownership and control of the property involved so as to enable the trial court to resolve the questions of injunction and declaratory judgment before it.

It would appear, under the guide lines set down in *Hull Memorial, supra*, that the trial court could have properly heard and determined certain aspects of No. 30049 (Common Pleas No. 842, 626), 30057 (Common Pleas No. 841, 384), and 30059 (Common Pleas No. 861, 453) on neutral principles of law developed for use in all property disputes, but not on any basis requiring the civil court to resolve ecclesiastical questions.

It would further appear that the civil law determination of property rights on neutral principles in the above three cases would, as a practical matter, constitute one of the other legal remedies available to the parties as considered in Case No. 29280 as previously discussed herein.

We think headnotes numbered 1, 2, 5, and 8, classified as to U. S. Supreme Court Digest, annotated, as found on page 659 of 21 L. Ed. 2d, with reference to *Hull Memorial*, as cited below, are pertinent to our thinking:

"Constitutional Law Sec. 936 – religious freedom – church property dispute – judicial determination

"1. The restraints as to religious freedom of the First Amendment, as applied to the states through the Fourteenth Amendment, do not permit a civil court to award church property on the basis of the interpretation and significance the civil court assigns to aspects of church doctrine.

"Constitutional Law Sec. 936 – religious freedom – church property dispute – state court determination

"2. The provisions of the First Amendment as to religious freedom, as made applicable to the states by

the Fourteenth Amendment, are violated by state courts in an action instituted by local churches against a hierarchical general church organization to determine the right to local church property after the local churches voted to withdraw from the general church because of the latter's alleged departure from its original doctrines and tenets, where the courts, in entertaining and affirming a judgment for the local churches on the ground that the implied trust of local church property for the benefit of the general church had terminated because the general church had subsequently departed from its original doctrines, were required to determine the controversy on the basis of the courts' interpretation of particular church doctrines and the importance of those doctrines to the religion, the First Amendment forbidding civil courts from playing such a role.

Constitutional Law, Sec. 936 — religious freedom — church property disputes — judicial determination

5. The provisions of the First Amendment as to religious freedom severely circumscribe the role that civil courts may play in resolving church property disputes, and even though not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment, and there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded, nevertheless First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of "controversies" over religious doctrine and practice.

Constitutional Law, Sec. 936 — First Amendment — church property disputes

6. The First Amendment prohibits a state from employing religious organizations as an arm of the

civil judiciary to perform the function of interpreting and applying state standards with regard to disputes as to church property."

For the reasons initiated herein, I concur with the judgment of the Court.

SMITH, J. (DISSENTING)

I respectfully dissent to the judgments of the majority of the Court in the consolidated cases Nos. 30049, 30057 and 30059 on the docket of this court reversing the judgments of the Common Pleas Court granting partial summary judgments, for the reason that the entire record does not disclose a genuine issue or dispute concerning the material facts involved and that summary judgment, as a matter of law, was properly invoked and that the judgment of the Common Pleas Court should be affirmed. I concur in the judgments and disposition of the other cases by the majority of this Court not inconsistent with the aforesaid dissent and affirmance.

## MEMORANDUM TO LAWYERS
## OF
## THE COURT OF APPEALS
## FOR THE EIGHTH JUDICIAL DISTRICT
## (SUPPLEMENTAL JUNE 30, 1971)

In the interest of justice and in an attempt to clarify the legal position of the six causes of action which are the subject of the appeals before this Court, the two majority members of this assigned panel find it necessary to file a supplement to each of their earlier separate "memorandum to lawyers" filed in these causes on May 6, 1971.

In addition to the reasons set forth in our previously filed separate memorandums, we wish to jointly add the following reasons for reversing the trial court in Court of Appeals Cases Nos. 30049, 30057, and 30059.

We are of the opinion that the ruling indicated in the final judgment entered by the trial court in Cases Nos.

.80049, .80057, and .80060 constitutes a violation of the First Amendment and the Fourteenth Amendment of the United States Constitution.

In support of this opinion we adopt the reasoning of Justice Brennan in Maryland and Virginia Eldership of The Churches of God vs. Church of God at Sharpsburg, et al., 90 S. Ct. 880, in which he stated:

> "To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine. Similarly, where the identity of the government body or bodies that exercise general authority within a church is a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy. In other words, the use of the Watson (Watson v. Jones, 13 Wall 679 20 L. Ed. 666) approach is consonant with the prohibitions of the First Amendment only if the appropriate church governing body can be determined without the resolution of doctrine questions and without extensive inquiry into religious polity."

There is no doubt that a controversy exists here between the parties as to which church is the appropriate church governing body and the answer cannot be found without the resolution of doctrinal questions and without extensive inquiry into religious polity.

We are of the opinion that the answer to the question of which church the various parties are members of and which church's authority they are subject to would involve the determination of religious law and usage and require the determination of doctrinal questions and require extensive inquiry into religious polity, which inquiry is in violation of the First Amendment to the United States Constitution.

In further support of the proposition that civil courts cannot constitutionally determine matters of church government, we quote from a per curiam opinion of the Ohio Supreme Court in Church v. Kelenien, 21 Ohio St. 154 (Page 159):

> "That court arrived at legal conclusions relative to the organizational relationship, powers and duties of the Mother Church concerning the appointment of a bishop for the Diocese of the United States and Canada; and the Mother Church's attempt to eliminate the diocese. While we recognize that these matters of internal church organization are chronic sources of disagreement for the parties and are frequently mentioned in the pleadings, briefs and arguments, the findings of the Court of Appeals are unnecessary and immaterial to a neutral law inquiry utilizing principles of law developed for use in all property disputes. Further, the Hull Memorial case offers the strong suggestion that civil courts cannot constitutionally determine matters of church government. In that case, the court's opinion cites with approval Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U. S. 94, 97 L. Ed. 120, where, at page 116, the court said:
>
> "'* * * The opinion (Watson v. Jones, 80 U. S. 679, 20 L. Ed. 666) radiates * * * a spirit of freedom for religious organizations, and independence from secular control or manipulation — in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. Freedom to select the clergy, where no improper methods of choice are proven, we think must now be said to have federal constitutional protection as part of the free exercise of religion against state interference.'"

Answers to these questions are not necessary to the determination of church property ownership and control

since the property is in the name of an Ohio corporation and neutral principles of law are applicable.

The Kelemen case cited above also touches upon this point when it states:

> "The control of the name and property of the Serbian Orthodox Church congregation of St. Demetrius of Akron, Ohio must be determined only by reference to the provisions of the Code of Regulations and By Laws of the corporation not for profit, the corporate laws of this state, and any other secular instruments not requiring the resolution of religious tenets or doctrine."

Accordingly, the final judgment of the trial court in Court of Appeals Cases Nos. 30049, 30057, and 30059, as well as the temporary orders issued in Court of Appeals Cases Nos. 29103 and 29104, are in violation of the First Amendment and the Fourteenth Amendment of the United States Constitution.

Cases Nos. 30057, 30049, and 30059 are remanded for further proceedings according to law.

Judge Robert E. Cook

Judge Edwin T. Hofstetter

## SUPPLEMENTAL DISSENTING OPINION OF DUDLEY F. SMITH JR. OF THE COURT OF APPEALS FOR THE EIGHTH JUDICIAL DISTRICT

(July 12, 1971)

SMITH, J.

It having been brought to my attention on July 6, 1971 that a Supplemental hearing was held before Judges Cook and Hofstetter without my participating therein on June

2f. 1971 and that as a result of that hearing a Supplemental Memorandum to Lawyers was issued by the Court, and since I respectfully dissented to the judgments of the majority of the Court in the consolidated Cases Nos. 30057, 30049 and 30059 on the docket of this Court reversing the judgments of the Common Pleas Court granting partial summary judgments, and in the interests of justice and in the attempt to clarify and expand the reasons why I would have affirmed the judgment of the Common Pleas Court, I find it desirable to file this Supplemental Dissenting Opinion.

The unreversed findings of fact by the Honorable Charles W. White, J. of the Common Pleas Court of Cuyahoga County in *St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio vs. Naperta, et al.*, Cuyahoga County Common Pleas Court Case No. 795,014, Eighth District Court of Appeals Case, No. 27,520, the Articles of Incorporation of St. Sava Serbian Eastern Orthodox Church dated January 17, 1928, together with the By-Laws of St. Sava Serbian Eastern Orthodox Church, the Diocesan Constitution, and the Constitution of the Serbian Orthodox Church, and the supporting Affidavits and attached Exhibits filed in support of the Motions for Summary Judgment, support my conclusion that the entire record of these consolidated cases does not disclose a genuine issue or dispute concerning the following material facts:

1. That St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio is a member church of the Serbian Eastern Orthodox Church headquartered in Belgrade, Yugoslavia, and a member of its Eastern American and Canadian Diocese;

2. That the Serbian Eastern Orthodox Church is hierarchial and episcopal in structure, and

3. That as an integral and organic part of that hierarchy, St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio is subordinate to the authority of the Serbian Eastern Orthodox Church in matters ecclesiastical.

In view of the lengthy history of litigation between the parties hereto, the record herein discloses to me that the Cuyahoga County Common Pleas Court has exhaustively inquired into and determined all the facts material to the resolution of these consolidated cases, especially such a fundamental fact as St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio being a member church of the hierarchical Serbian Eastern Orthodox Church.

Therefore, it is my opinion that Summary Judgment was a proper procedural remedy for the resolution of these consolidated cases.

I further respectfully dissent to the decision and judgment of the majority of the Court that the Summary Judgments granted by the Common Pleas Court were in violation of the First and Fourteenth Amendments to the Constitution of the United States.

In determining that St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio is a member church of the Serbian Eastern Orthodox Church headquartered in Belgrade, Yugoslavia and subordinate thereto in authority in matters ecclesiastical, no determination of religious doctrine or tenets and no extensive inquiry into church polity was made by the Common Pleas Court. The Common Pleas Court based its granting of partial summary judgments upon neutral principles of law and applied the legal doctrine as enunciated in *Watson vs. Jones*, 80 U.S. (13 Wall.) 679, 20 L. Ed. 66 (1871).

In affirming the judgment of the Common Pleas Court as a matter of law, I adopt the principles as set forth in Syllabi 9 and 10 of *Watson vs. Jones:*

> "9. In the class of cases in which property has been acquired in the same way by a society which constitutes a subordinate part of a general religious organization with established tribunals for ecclesiastical government, these tribunals must decide all questions of faith, discipline, rule, custom, or ecclesiastical government.

"10. In such cases where the right of property in the civil court is dependent on the question of doctrine, discipline, ecclesiastical law, rule, or custom, or church government, and that has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive, and be governed by it in its application to the case before it." *Watson vs. Jones*, supra, 680.

and the reasoning of the Court set forth at pages 726 and 734 of the Opinion:

"The case before us is one of this class, growing out of a schism which has divided the congregation and its officers, and the presbytery, and synod, and which appeals to the courts to determine the right to the use of the property so acquired. Here is no case of property devoted forever by the instrument which conveyed it, or by any specific declaration of its owner, to the support of any special religious dogmas, or any peculiar form of worship, but of property purchased for the use of a religious congregation, and so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property. In the case of an independent congregation, we have pointed out how this identity, or succession, is to be ascertained, but in cases of this character, we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgment." *Watson vs. Jones, supra,* 726.

"... The appellants in the case presented to us have separated themselves wholly from the church organization to which they belonged when this controversy commenced. They now deny its authority,

denounce its action, and refuse to abide by its judgment. . . .

Under any of the decisions which we have examined the appellants, in their present position, have no right to the property, or to the use of it, which is the subject of this suit." *Watson v. Jones, supra*, 734.

With respect to the decision of the United States Supreme Court in *Presbyterian Church in the United States vs. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 21 L. Ed. 2d. 658, 89 S. Ct. 601 (1969) and in *Eldership vs. Church of God at Sharpsburg*, 396 U.S. 367, 24 L. Ed. 2d. 582, 90 S. Ct. 499 (1970), it is clear that inquiry may be made into the structure of church government for the limited purpose of identifying the appropriate hierarchical denominational governing body provided that such inquiry can be made without a determination of church doctrine and tenets, and that "neutral principles of law" are any principles of law which do not involve the determination of church doctrine and tenets in their application.

In summary, I would affirm the judgment of the Common Pleas Court granting partial summary judgments for the reason that the determination that St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio is a member church of the Serbian Eastern Orthodox Church headquartered in Belgrade, Yugoslavia, and is subordinate to its authority in matters ecclesiastical in nature, did not require a determination of church doctrine and tenets and was based upon the application of neutral principles of fact and law.

To allow a majority of a religious congregation, associated with a hierarchical denominational church, to divert church property to religious uses and purposes prohibited by the hierarchical authorities of such denomination constitutes in and of itself the establishment of religion contrary to the First Amendment to the Constitution of the United States, amounts to a taking of property rights of

the minority without due process of law in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States, and fosters religious anarchy.

THEREFORE, for all of the reasons set forth hereinabove, I dissent from the judgment of this Court.

Judge Dudley F. Smith,
Dissenting

## JUDGMENT ENTRY OF THE COURT OF APPEALS FOR THE EIGHTH JUDICIAL DISTRICT
## (JUNE 30, 1971)

This cause came on to be heard upon the transcript, Bill of Exceptions, Assignments of Error and Briefs, and arguments of counsel. This Court finds that the trial court committed prejudicial error in that said judgment is in violation of the First and Fourteenth Amendments of the United States Constitution and contrary to the Ohio laws on summary judgment.

This cause is remanded to the Common Pleas Court for further proceedings according to law.

It is ordered that said appellant recover of said appellee his costs herein.

It is further ordered that a special mandate be sent to the Common Pleas Court to carry this judgment into execution.

Robert E. Cook, *Presiding Judge*.

(Cook, P. J., Hofstetter, J., concur; Smith, J., dissents.

(Cook, J., and Hofstetter, J., sitting by designation from the Eleventh Appellate District. Smith, J. (retired) sitting by designation from the Sixth District.)

## ORDER OF THE SUPREME COURT OF OHIO DISCUSSING APPEAL AS OF RIGHT

(September 22, 1971)

This cause, here on appeal as of right from the Court of Appeals for Cuyahoga County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

## ORDER OF THE SUPREME COURT OF OHIO OVERRULING MOTION TO CERTIFY

(September 22, 1971)

It is ordered by the Court that this motion is overruled.

## ORDER OF THE SUPREME COURT OF OHIO DENYING REHEARING

(October 13, 1971)

It is ordered by the court that rehearing in this case is denied.

## APPENDIX B: ENTRIES IN COMPANION CASES

ST. SAVA SERBIAN ORTHODOX CHURCH OF CLEVELAND, OHIO vs. MILAN NAPERTA, et al, COMMON PLEAS NO. 795014

## OPINION OF THE COURT OF COMMON PLEAS OF CUYAHOGA COUNTY

(May 3, 1965)

WHITE, *J.*:

This cause was instituted in this court by the St. Sava Serbian Orthodox Church, an Ohio Corporation not for profit against twenty-odd individuals against whom it seeks an injunction and equitable relief. Defendants answered jointly and cross petitioned for like relief against thirteen-odd other individuals as new parties defendant. Issues were duly joined by the joint answer of new defendants to the cross petition (amended in the course of trial by agreement), and defendants' reply thereto.

The plaintiff complains that defendants have engaged and will continue to engage in certain stated courses of conduct contrary to law and damaging to it. Defendants claim that they are the duly elected officers and other functionaries of the plaintiff and that they have been unlawfully interfered with in the performance of their duties by the new defendants. The new defendants claim that they are the duly elected officers of the plaintiff and that defendants are usurpers in effect. The controversy led to the closing of the church—a new and expensive structure—on or about March 12, 1964 in the interests of the public peace. Since that time the defendants and new defendants and their respective followers have met and held services separately away from the church.

For convenience the plaintiff will be referred to herein as St. Sava and the defendants and new defendants as the Naperta faction and the Simich faction respectively.

A fairly complete summary and analysis of the evidence is considered essential to a correct understanding of the issues presented for determination. It is abundantly

clear from the evidence that prior to 1962 St. Sava was a parish closely and agreeably identified with the Serbian Eastern Orthodox Church through the "Mother Church" with headquarters in Belgrade, Yugoslavia and through the Serbian Orthodox Diocese of the United States and Canada. The structure was hierarchal and episcopal. Both the Mother Church and the Diocese operated pursuant to written Constitutions. The supremacy of the Mother Church within the scope of its authority and operating through a Patriarch, a Holy Council (or Assembly) of Bishops and a Holy Synod in Belgrade in all matters having to do with the ecclesiastical aspects of the Serbian Orthodox Church in Yugoslavia and elsewhere was freely acknowledged and abided by. The Holy Synod, as the executive arm of the Holy Assembly of Bishops and the Holy Assembly itself (composed of the Patriarch and the Bishops of each diocese) had the authority, under its constitution, to establish dioceses, prescribe their geographical boundaries and elect or appoint Bishops to preside over them. In the exercise of such authority the Diocese of the United States and Canada was established by the Mother Church and a Bishop was elected by that authority to preside over it. Several successor Bishops had been chosen in the same manner prior to the time the controversy in question arose.

The Diocese of the United States and Canada was the only diocese in North America. In 1927 it adopted its own written Constitution. In subsequent years and until 1963 amendments to its Constitution were proposed and adopted—but in each instance subject to the approval of the patriarchy in Belgrade. In only one instance prior to 1963 was such approval withheld. On that occasion eight amendments were submitted at one time by the Diocesan National Assembly (or Sabor). Seven were approved. One was not. The one had to do with the election of the Diocesan Bishop by the National Sabor instead of by the patriarchy in Belgrade. Apparently the National Sabor accepted the rejection of that proposal whether in loyal

good grace or with reluctant acquiescence. The point was not a crucial one at that time because the Diocese had a Bishop who had been elected by the Holy Assembly of Bishops and sent from Belgrade. He had served continuously since 1940 and had on many occasions acknowledged in writing his steadfast allegiance and loyalty to the Mother Church to whom he had so pledged by the episcopal oath he took and subscribed to upon being elected Bishop of the overseas diocese.

The diocese was incorporated under the Laws of Illinois in 1935. The Certificate of Incorporation contains an affirmation that seven (7) named persons had been nominated and appointed as trustees of the diocese "according to the usages, customs and Canons of (the) Serbian Orthodox Church" under the Corporation Act of the state. The affirmation was made by the late Bishop Mardary described in the Certificate as "having jurisdiction agreeably to the laws of the Serbian Eastern Orthodox Church over-said diocese, by virtue of his appointment as Bishop of said Diocese by his Holiness Patriarch Varnava, of Belgrade, Yugoslavia." The Certificate contains no purpose clause although the evidence tends to show that the purpose was to hold in trust the property then belonging to the diocese and formerly owned by Bishop Mardary.

A close study of the two written Constitutions in question discloses a remarkable parallel in subject matter and ecclesiastical structure. It is contended by the defendants that the Diocesan Constitution, from the beginning proclaimed iteslf to be autonomous in all things pertaining to it. Viewing the evidence pertaining to that contention in its most favorable aspect we find that the Constitution does proclaim autonomy in certain areas of diocesan activity, such as property matters, but nowhere does it challenge the superior authority of the Mother Church in the area of establishing dioceses and of electing and assigning Bishops. In the course of the trial an attempt was made on behalf of the defendants to show that a Bishop

appointed by the church authorities in Belgrade and assigned to the diocese in North America was subject to approval or acceptance by the people of the diocese. They may well have looked him over and examined his credentials, but not once in the whole history of the diocese has a Bishop so elected and so assigned been rejected unless it occurred in the year 1963 and about which more will be said hereafter.

Under the Constitution of the Mother Church the Bishops of the several dioceses at home and abroad convene and choose or elect one of their number to be the patriarch and president of the Holy Assembly. Four of their number are chosen to constitute the Holy Synod also under the presidency of the patriarch.

Under the diocesan Constitution the Bishop is the ecclesiastical head. A diocesan council serves under his guidance and it has certain prescribed authority in respect to temporal or secular matters. Another organ of the diocesan establishment is an ecclesiastical court, under the Bishop, with certain prescribed authority pertaining to spiritual matters. The top diocesan authority in respect to legislative matters is the National Sabor, an assembly composed of clerics and laymen, presided over by the Bishop and which normally convenes biennially. Prior to 1963 nine such assemblies had been held.

St. Sava—as a church-congregation—predated the establishment of the Diocese of the United States and Canada by a number of years. When the diocese was established St. Sava promptly affiliated with the new diocese. In January, 1928 St. Sava became an Ohio Corporation not for profit. The purpose clause of its Articles of Incorporation state: "° ° ° not for profit but to promote the cause of the Christian Religion to provide a place of worship for its members, to be conducted in accordance with the rules and laws of the Serbian Orthodox Church, to receive, hold and disburse gifts, bequests and other funds for said purposes, to own and maintain suitable real estate and buildings for its purposes and to do all

things necessary and incident thereto." The term "rules and laws of the Serbian Orthodox Church" can have but one legitimate connotation, namely, the rules and laws of the Mother Church as represented by the hierarchy in Belgrade. In no instance disclosed by the evidence has the Diocese of The United States and Canada presumed to call or consider itself as the "Serbian Orthodox Church."

The local church adopted by-laws proclaiming such affiliation and providing for its internal organization as a church-school congregation. It has a priest in residence chosen by the Bishop of the diocese. It has a governing body in the form of an executive committee and an auditing committee. The by-laws further provide for the offices of president, two vice-presidents, secretary, financial secretary and treasurer; and also for four vestrymen and three committeemen—all thirteen of whom are to be elected annually by the church assembly in annual or special session. The priest is a member ex-officio of the Executive Committee. The auditing committee consists of from "three to five persons" elected by the church assembly. It is contended by the defendants and there is some evidence tending to show that the Auditing Committee is more than its name portends; and that in reality it is a supervisory committee charged with the responsibility of overseeing the entire organization, including the Executive Committee. The respective duties of each of the committees are defined in some detail in the by-laws and the provisions found there do not bear out the contention of the defendants. On the contrary, according to the by-laws the Auditing Committee is just what its name implies; and the fact that its members usually met with the Executive Committee added nothing to its stature as so proscribed. It does have the authority to find fault and point out irregularities in the management of the church properties but has no authority to initiate or carry into effect corrective measures. Both the Executive Committee and the Auditing Committee are subordinate in authority to the Church Assembly. The Church Assembly usually meets once a month and in December of each year is

scheduled to convene in annual meeting upon call of the Executive Committee.

It is in such a framework or background that the particular facts and circumstances affecting St. Sava at this time must be fitted, for they involve all three levels of the structure of the Serbian Orthodox Church—the patriarchy, the diocese and the local parish—and their relationships.

In July, 1961 construction was under way in Parma for a new "million-dollar" edifice to house St. Sava, its church school and its priest in residence. The people themselves had raised or pledged something over $250,000 to this end. A construction loan in the amount of $400,000 had been arranged. In the ensuing months it became apparent to the responsible officers of the church that acceleration of the effort was dire necessity, for the new church structure not only had to be completed but it also had to be fitted out. Certainly all of the responsible leaders of the parish, including the priest and some of the defendants then in official position, seriously addressed themselves to the financial problem at hand. A succession of statements and reports told the story in lucid terms to all the members and parishioners. By the time of the annual meeting of the Church Assembly on December 2, 1962 the response had been less than was hoped for and less than was needed to meet the monthly payments of $4,000 on the mortgage.

At the annual meeting held December 2, 1962 a resolution was proposed and adopted by better than a two-to-one vote of members present and remaining after debate. The resolution, as reported to the members and parishioners in the St. Sava Reporter for January, 1963 was "in connection with the church mortgage" and in terms was as follows:

> "Whereas, at the past regular and special meetings of the St. Sava Serbian Orthodox Church decisions were made a new church, school and parish home; and

"Whereas, it was decided at the said meetings that this church borrows $400,000.00 to build said new church, school and parish home; and

"Whereas, the St. Sava Serbian Orthodox Church is obligated to pay $4,000.00 monthly on account of said loan; and

"Whereas, the regular monthly receipts are not adequate for the payment of said loan; and

"Whereas, a number of the church members did not contribute expected, necessary and possible amounts, called for by the Church Board and the Building Committee, therefore be it

RESOLVED

"That each member of the St. Sava Serbian Orthodox Church at Cleveland, who did not contribute for the building of new church, school and the parish home $500.00 or more, pays from January 1, 1963, in addition to regular monthly membership dues, $10.00 monthly for the payment of said mortgage, until he contributes $500.00.

"It was further resolved that a member who disregards this decision, will lose all membership rights, prescribed by the Constitution and By-Laws of the Church.

"This decision does not obligate members who have attained the age of 65 years or more, whose monthly income is not over $125.00, invalid and indigent members.

"It was further resolved that committee of three members be elected who will check conditions of those members who apply for exemption and inform the Church Board of its findings."

The foregoing resolution became a focal point of warm controversy and debate among the members. The "Church Board" did nothing to implement the resolution

until December, 1963 when it was decided that the terms of the resolution be applied in determining "members in good standing" for the purpose of the upcoming annual meeting. An action was commenced in this court November 4, 1963 by one Savko Jovanovic (one of the defendants in the instant case) against Tom Simich and others (being cause number 790246) in which the validity of the December 2 meeting and the validity of the foregoing resolution were challenged and injunctive relief sought. By agreement of all parties this court, on a hearing of a motion by plaintiff for a temporary restraining order, ordered that the annual meeting scheduled for December 29, 1963 be postponed to January 26, 1964 and advanced the cause for trial on the merits to January 13, 1964. A trial was duly had. On January 20, 1964 the trial judge rendered his decision upholding the validity of the December, 1962 annual meeting and the resolution passed thereat. An appeal from that judgment is pending. (C. A. 26957.)

In the instant case the trial judge resisted attempts on behalf of the defendants to litigate anew the issues determined in *Janovic*, the position taken being that the decision in that case was the decision of the Court of Common Pleas and stood as such until and unless it should be reversed by the Court of Appeals.

Meanwhile disputes and controversy reigned among the members on fronts other than that pertaining to the 1962 resolution. In May, 1963 the officials of St. Sava, including the priest, were advised of certain far-reaching decisions made by the Holy Assembly of Bishops and/or the Holy Synod. As a prelude to those decisions the then Bishop of the Diocese of the U. S. and Canada had on occasions reported the remarkable growth of the diocese both in membership and number of churches in the diocese. On at least one occasion he made a request in writing of the patriarchy to furnish him with assistance in the form of two or more suffragan bishops. He was not present

when the decision affecting the diocese was reached in Belgrade in May, 1963. He had not been present at the annual assembly in Belgrade for several years prior to that, citing as his reason either ill-health or burdensome duties within the growing diocese. In one communication directed to the Patriarch the Bishop in America expressed strong opposition to the proposal of another Bishop to sever the ties between the Mother Church and the American diocese and emphatically stated his continuing abhorrence of any such idea. In any event at the meeting in Belgrade in May, 1963 it was decided that the Diocese of the U. S. and Canada should be abolished and in its stead be created three separate dioceses along geographical lines—Eastern, Midwestern, and Western. The then Bishop of the Diocese of the U. S. and Canada was appointed Bishop of the Midwestern Diocese the territory of which embraced the see (at Libertyville, Ill.) of the former all-inclusive American Diocese.

At a regular meeting of the Executive and Auditing Committees of St. Sava held on May 29, 1963 at the point in the agenda for reading of communications the secretary read a "Circular of the Holy Synod of the Serbian Patriarchate in Belgrade, concerning the reorganization of the Serbian Orthodox Diocese for America and Canada, as well as the letter–circular of the Bishop Sir Dionisy of May 25 of this year, by which he forwards the aforesaid circular of the Holy Synod and states his objections and defies all the decisions issued." In response to an inquiry during the meeting the priest stated that the circular from Belgrade was "authentic and trustworthy." The circular, addressed to "All sons and daughters of the Serbian Orthodox Diocese of America and Canada," stated in part as follows:

> ° ° ° "And even now, concerned with your welfare, her loyal children who are in the far world, but close to her heart, the holy Church at the convention of the Holy Episcopal Council this year made several

decisions having in mind your needs, your spiritual good and advancement, also has concurred with the many, repeated proposals from the clergy and people to establish several dioceses and install several bishops for a large territory, and so instead of the existing up to now American-Canadian Diocese, three dioceses have been formed: Middle-Eastern American-Canadian Diocese, Middle-Western American Diocese, and the Western American Diocese. For the Middle-Eastern American-Canadian Diocese the Very Rev. Stefan Hastavica, pastor of Windsor, was elected Bishop. The former bishop, his Grace Dionisije, has remained as the bishop of the Middle-Eastern Diocese, but, due to many charges against him, by recommendation of the Holy Episcopal Council and decree of the Holy Episcopal Synod he is temporarily suspended from duties and placed under ban of priestly functions till the final decision is made by the Canonical Court, during which time the direction of this diocese is temporarily placed under the administration of the Very Rev. Archimandrite Dr. Firmilian Ocokoljich. The Very Rev. Archimandrite Gregory Edicki, pastor of Youngwood, is the temporary administrator of the Western-American Diocese.

"All these decisions were made by the Holy Episcopal Council and Synod having in mind only evangelical and canonical regulations, the foundation of the Orthodox Church, the good of your souls, peace and spiritual unity of the indivisible Body of Christ—the Holy Church."

The reading of the foregoing circular prompted a question at the meeting as to who was to consecrate the new church, an event previously scheduled for Sunday, June 9, 1963, now that Bishop Dionisy had been suspended. It was decided to address a telegraphic inquiry to the patriarchy in Belgrade for an answer to that question. Notice of the aforementioned decision and order of sus-

pension had been duly forwarded to Bishop Dionisy from Belgrade.

Following the May 29th meeting the regular monthly meeting of the church assembly convened on June 1, 1963. A motion was made and prevailed that the congregation of St. Sava, at its next meeting in July proceed to elect delegates to "the 10th Diocesan Church National Assembly which is to be held in the Monastery of St. Sava in Libertyville October 15, 16, and 17th of this year." The motion was made by defendant Milisavljevic. A further motion was made by defendant Matic and prevailed that diocesan dues be paid before the convening of the National Assembly. At that point the secretary read the minutes of the May 29th meeting of the Executive and Auditing Committees whereupon "there commences (sic) a sharp discussion and debate regarding the submitted question and sought-for approval from the Belgrade Patriarchate as to who shall dedicate the new Serbian Church in Cleveland, June 9th of this year." Then the priest in residence, "having begged the disquieted ones to return and sit in their places and to be patient, which was then done," spoke as follows: "Brothers and Sisters, just as we knew how to erect our new church and the other church buildings, in the same way we shall know how to dedicate them. If Bishop Dionisije gets a blessing-approval he shall come and dedicate our new church because otherwise he may not, just as other priests without blessing and approval may not take part since we are not yet separated from the Belgrade Patriarchate. Archimandrite Firmilian has earlier been our Bishop's alternate, and he shall come. Archimandrites Udicki and Balac and other priests shall come, and accordingly, we shall dedicate our new church with the lesser dedication at this time;" and further that "We, if we come to such a situation shall defend our freedom. This is not a question of Bishop Dionisije, but of our church on this continent. We shall elect our delegates for the assembly of our Diocese which shall bring forth decisions about all questions of our church in the United States

and Canada. So accordingly, again, I beg and appeal to all be patient, respond and take an active part in the present dedication of our Holy Church and thus help in the paying off of the tremendous debt which is not a little or easy matter." This advice from the priest was heard in silence and accepted.

On June 8, 1963 the Diocesan Council sent a communication to the Holy Synod in Belgrade stating that it lacked competence to decide whether to accept or reject the decision to divide the American Diocese and was, therefore, referring the question to a special call meeting of the National Assembly to be convened on August 6-9, inclusive because of "the urgency of the case," instead of the regular meeting previously scheduled for October 14-16, 1963. The National Assembly convened in such special session as scheduled. Out of its deliberations emerged an extended proclamation and resolution the sense of which was that (a) it found itself to be a legally constituted body; (b) it proclaimed the complete autonomy of the Diocese of the U. S. and Canada; (c) it rejected the decision of the Patriarchate to divide the diocese into three parts; (d) it rejected the decision of the same authority to suspend Bishop Dionisy; (e) it "demanded" rescission of both such decisions by the patriarchate within sixty days; (e) it declared that its actions were induced not only out of regard for its autonomy but also out of recognition that the Patriarchate was dominated by the Communist regime currently in control of the Yugoslav State and of the Patriarchate; and (f) it held out a hope that upon the eventual overthrow of said Communist regime the American diocese could again become united with the Mother Church. Thus the National Assembly for the first time in its history repudiated the authority of the Mother Church over it and declared its complete independence thereof.

While these events were happening at the diocesan level and the seeds of rebellion were being cultivated, controversy at the parish or local level became increasingly rife. In connection with the dedication of the new church,

the Naperta faction objected that the souvenir program did not contain the picture and message of Bishop Dionisy as was originally planned. The July, 1963 church assembly was attended by serious disorder (described by some witnesses as riotous) featured by physical combat when the president announced there would be no election of delegates to the National Assembly. As a result the Church Board decided not to hold a monthly church assembly in August; and none was held for the rest of the year 1963 for like reason. In September, 1963 the Naperta faction demanded in vain that monthly assemblies be resumed. Several hundred "members" of St. Sava joined by the priest in residence, protested to the diocese and complained of "the self-willed acts of the President of the Executive Committee." The Bishop and the Executive Committee of the diocese responded by declaring invalid the December, 1962 resolution and directing that three certain members of the Naperta faction call a special church assembly November 3 under the supervision of a delegation of three from diocesan headquarters. The delegation was also charged with the duty of finding out "why the president has been avoiding the calling of the regular monthly meetings of all members." In October the Naperta faction further complained that meetings of the Executive Committee were being held without invitation to the members of the Auditing Committee and challenged any decisions arrived at in the absence of the latter committee.

On November 14, 1963 the National Assembly of the Diocese of the U. S. and Canada reconvened. It was reported that there had been no "direct answer" to their August ultimatum to the Mother Church but there had been a circulation of leaflets throughout the U. S. and Canada setting forth the decisions and position of the Patriarchate. The Assembly, in its "Second Proclamation," declared itself to be the sole protector and saviour of the Serbian Orthodox people in all the free world against the invidious machinations of the Communist forces to which

the Patriarchate was claimed to be subserviently responsive. It therefore declared itself free and independent of the Belgrade Hierarchy, announced it would not honor its decisions in the future and again repudiated its decisions of May, 1963. The following language appears in one part of the proclamation-resolution:

> "Several times it was emphasized and put into the last amendments of our Constitution which were adopted at the Tenth Church-National Assembly that our Diocese is considered as a part of the Serbian Orthodox Patrjarchate ° ° °. With this we wish to emphasize and in the minutes of history, that we are a continuation of that old, free, Mother Church and her last free part."

The would-be-suspended Bishop Dionisy presided over both sessions of the Tenth National Assembly.

The Holy Synod did respond to the diocesan proclamation of August, 1963 in the form of a communication to the newly elected Bishop of its Eastern Diocese of America and Canada in which it wholly rejected the actions and decisions of the August Assembly on four specific grounds, including the fact that Bishop Dionisy "participated as diocesan Bishop ° ° ° despite the fact that he had no right to it, being suspended, and as such was removed from the Diocese by the decision of the Holy Assembly of Bishops" (July 27, 1963).

On October 25, 1963 the Executive Committee of St. Sava met. Eleven of the thirteen members were present. The president announced that if the church is to continue (in its new structure) "we have as soon as possible to do what is necessary to put in effect Assembly Resolution ° ° ° of December 2, 1962, for the following reasons: ° ° °." The Executive Committee then proceeded, after lively debate, to resolve the question in the affirmative. One member—Brother Gligorije Djuric—pithily stated the issue: "It is my opinion that our people is not against the mentioned Assembly Resolution. The question is to make

a decision who is for the old Diocese for America and Canada—and who is for the new three Dioceses and their new Bishops whom we do not want because they are imposed to us." The only recorded response to the statement of the issue came from the First Vice-President, Borato who said: "We cannot change now what we sometime ago have asked for through our highest church authorities—the Holy Archierean Assembly and the Serbian Orthodox Church Holy Synod—approved and decided upon." By a vote of eight to three the Executive Committee decided to disregard the decisions of the "abolished" diocese of the U. S. and Canada and its "suspended" Bishop Dionisy; and to adhere to the decisions of the Holy Synod and the Holy Assembly of Bishops.

After the decision of this court in *Janovic v. Simich* the incumbent Church Board caused a list of members in good standing to be compiled, applying the December, 1962 resolution as the standard. It decided that except for the exempt persons, only those members who had contributed $500 to the building fund prior to January, 1963 and those who had paid $10 per month into that fund during 1963 should be permitted to vote at the coming annual meeting. Several of the defendants were on the resulting list of 332 eligibles. Some were not. Expulsion from membership was at no time considered.

St. Sava's by-laws draw a clear line of demarcation between "members" and "parishioners." Persons "who only avail themselves of the services of the Church" but have not been accepted as members in the prescribed manner are parishioners. Monthly dues are such as are prescribed by the church assembly at its annual meeting, employing the calendar year as the basis. Members of the armed forces, students and women of the Circle of Serbian Sisters are exempt from paying dues. Those Sisters who are of the Eastern Orthodox Faith and married to a member of the church, are entitled to "enjoy all the benefits of membership." The term "member in good standing" is recognized in the by-laws. It can only mean a member

who discharges his duties as such, including payment of dues as prescribed by all non-exempt persons.

On the court-appointed day of the defined 1963 annual meeting a large number of people gathered in and around the church premises and outside the meeting hall. There had been announcements beforehand by circular and by radio that all should attend the "illegal meeting" and ignore the decision in *Janovic v. Simich*. Police were on hand in numbers to maintain order. An attempt was made to limit attendance inside the meeting hall to those on the prepared list of members in good standing. Outside the meeting hall confusion and some disorder was rampant. The meeting proceeded to be held and resulted in the election of the new defendants to the several offices and committees—all of them being members of the Simich faction.

Almost immediately after the January 26, 1964 annual meeting the Naperta faction registered a lusty complaint to the authorities at Libertyville. Some 400 persons subscribed to the complaint, including the parish priest. The Diocesan Council, with Bishop Dionisy presiding, made short work of the complaint, sustaining it in full. The evidence is inconclusive as to how much of an investigation of the complaint, if any, was made before the Diocesan Council decided that the December, 1962 resolution, the annual meeting and the election thereat were all illegal and void. Certain it is that no member of the Simich faction was invited to appear before the Diocesan Council and be heard to answer the complaint. Having so decided, Bishop Dionisy soon followed with a telegraphic directive from California that the petitioners call and conduct a new assembly with new elections designating February 23 or March 8 as the date for such meeting. The directive was received on February 21. The called-for meeting was convened Sunday, February 23. Everybody who appeared was admitted. Two forms of ballots were distributed to those present: One being in favor of maintaining allegiance

to the old diocese and the other being to the contrary. All ballots cast were in favor of the maintaining allegiance to the old diocese and therefore sever the pre-existing ties with the Mother Church. After the meeting some attempt was made to determine who was eligible to vote—without regard to the December, 1962 resolution. When it was discovered that some "members," so determined, were not present or had not voted ballots were mailed to such and there were some returns—100% for secession. At the February 23 meeting officers and committeemen were elected. All of them are defendants herein and members of the Naperta faction. The results were reported to the officials in Libertyville and approved by that source. Then a second assembly was convened on March 8 to ratify the decisions made at the February 23 assembly. Ratification was easily forthcoming.

Upon being elected Mr. Naperta and his associates promptly "took over." His vestrymen ousted their predecessors from the performance of all their customary duties. The church office was pre-empted. The church bank account was frozen and payment of outstanding checks was stopped.

As might be expected, considerable clamor followed in the wake of these events. Disorder became so furious that the church was closed to both sides by municipal authorities on or about March 12, 1964. It remains so to this day.

The charges against Bishop Dionisy proceeded to a conclusion in early 1964. He was served with a copy of the detailed charges and given an opportunity to answer within one month. He sought a six-month extension of time and was granted one additional month. A special commission was dispatched to the United States and instructed to conduct a full investigation of the charges and report back. The investigating commission interviewed Bishop Dionisy at a public restaurant instead of at his office or residence upon his insistence. He was found to

be less than cooperative. Subsequently a duly constituted trial was conducted by the Holy Assembly of Bishops in Belgrade. Bishop Dionisy did not answer or elect to appear. At the conclusion of the hearing or trial the charges were sustained. Bishop Dionisy was divested of his episcopal and monastic ranks, removed from the roll of the hierarchy of the Serbian Orthodox Church and returned to the status of layman under his secular name.

A transcript of the proceedings in Belgrade was admitted in evidence but only for the purpose of showing that the procedures followed were as prescribed in the hierarchal constitution. The court finds they were in all respects regular and lawful. As for the charges, the court indulges no opinion as to the truth or falsity of any of them but merely observes that each of them were of a very serious nature which if proven to the satisfaction of the triers of the facts would more than justify the result. In any event the evidence here does not disclose that anyone—including himself—proclaimed his innocence.

One item of evidence affords a striking contrast in the official behavior of Bishop Dionisy shortly before his suspension was made known. The Clergy Association of the Diocese held its annual meeting in Lorain, Ohio, on May 8 and 9, 1963. Bishop Dionisy attended and affixed his signature to the ten-point Resolution unanimously adopted at the meeting. Noteworthy items in said resolution are as follows:

"RESOLUTION.

1. The clergy of the Diocese of America-Canada admitted in their Association, stands uncompromisingly for the spiritual, hierarchial and canonical unity with the Serbian Orthodox Church in the fatherland with His Holiness, the Serbian Patriarch and the Holy Bishops' Council at the head. This stand by the clergy was distinctly and unambiguously expressed at their annual meeting in Youngstown, Ohio, at their special meeting in South Bend, Indiana and at the meetings of the clergy of the Archpresbyterates for

the Middlewest and East. This stand was definitely formulated as well with the statement of the diocesan Executive Board dated April 17th, 1963. With this statement, the Diocesan Executive Board, the competent Bishop Mr. Dionisije at its head, implicitly declares itself to be "for the spiritual, hierarchial and canonical unity with our Holy Church in Yugoslavia; that it was, just as it is today and as it will be in the future, for the basic principle of ecclesiastical Serbian constitutionalism which states that the Serbian Orthodox Church is one, indivisible and self-governing." In regard to this indivisibility, distinctly expressed at the above mentioned clergy as well as Diocesan official gatherings, the members of the Clergy Association declare that they will not divert from this course.

2. The members of the Clergy Association denounce all suggestions, regardless of origin, of any autonomy of our Church in America and Canada, which are automatically excluded by the official stand of both the clergy and the Diocese on the unity of the church and which, being one, indivisible, and self-governing can only be governed in accordance with the Holy Canons of the Orthodox Church, the Constitution of the Serbian Patriarchate and the Constitution of the Diocese of America-Canada and what is most precious—the inheritance of St. Sava.

3. The Clergy Association condemns all unsubstantiated written and verbal assertions, that our church in the homeland—in the old country—is allegedly imposing her will upon us, which is directed by the present communistic authorities in Yugoslavia. We know that our Holy Serbian Orthodox Church exists under trying conditions today in our enslaved country and that just because of this she deserves explicit attention and moral and material support from us free Serbs. And even under such trying conditions, our Mother Church did not hinder the free and normal course of our church life here with a

single act. No one, therefore, has a justifiable reason to seek any change in our relationship with our indivisible St. Sava Church.

4. Due to the undesired disagreements and disturbances in our Diocese because of the discussions on autonomies, the Clergy Association meeting moves and begs the Diocesan Council and the Board for the Change and Amendment of the Diocesan Constitution to refrain from presenting all requests to legalize demands for seeking autonomy and removal from our Holy Church at the following Church-National Assembly of the American-Canadian Diocese.

9. In regard to the alleged faults and transgressions of our Bishop Mr. Dionisije, about which we hear and read, the Clergy Association stands implicity in accordance with the decision of the Diocesan Executive Board dated April 17th, 1963 which states: "that only the Holy Bishops' Synod and the Holy Bishops' Council of our Holy Church in Belgrade is competent for this matter and that they will bring their decision and decrees by reason of all set forth."

10. We appeal to our Orthodox and patriotic Serbian people in America and Canada to remain faithful and unfaltered sons of their St. Sava Church in these disturbed times, with complete confidence in their archpriests and clergy."

A valiant attempt was made by defendants, by way of cross examination of the chief secretary of the Holy Episcopal Council, to show that the Patriarchate in Belgrade was completely subservient in all things to the Communist state there. It was shown only that the Mother Church is required to comply with the civil laws and regulations; is limited, as are all other faiths, in the amount of property it may hold in its own right; is not penalized by reason of its faith or religious character; and is not subject to any political control in carrying out its proper func-

tions. The witness testified that the Mother Church has grown and expanded with the construction and opening of many new churches in the country; and that, politically, the Orthodox Church in Yugoslavia enjoys a position of equality with all the other of several different faiths in the country.

It may seem to some that the court has devoted an inordinate amount of space to a summary and an analysis of the evidence it considers conclusive. The court believes that the parties and their attorneys and others who may be interested in this decision should have the benefit of the analysis made by this court of equity of the mass of evidence presented during a trial that lasted five full weeks. The space consumed thus far can be justified only on that basis.

The primary question to be determined here is whether the Diocese of the U. S. and Canada was abolished and its territory divided by lawful authority. Article 16 of the Serbian Orthodox Constitution provides as follows;

> "The decisions concerning the creation, name, abolition, districting and the sees of the Dioceses, and concerning the creation and abolition of the positions of the Suffragan Bishops are rendered by the Holy Assembly of Bishops in accord with the Patriarchal Council."

The authority thereby reserved to the patriarchate seems to be clear and unambiguous. But it is urged by the defendants that Article 16 must be read and understood in connection with Articles 14 and 15 and with a certain historical fact about the diocese in America. Article 14 names twenty-four dioceses and designates their sees. Article 15 provides:

> "Besides the dioceses enumerated in the previous article, in the matters spiritual and hierarchical, to the Serbian Orthodox Church also belong these dioceses which are abroad:

1. The Serbian Orthodox Church in the United States of America and Canada, with its see in Chicago or in the Monastery of St. Sava, in Libertyville, Illinois;

2. Serbian Orthodox Diocese of Budim;

3. Parts of the Vrshatz and Temisvar Diocese outside the borders of Yugoslavia, with its see in Temisvar.

4. The Czech-Moravian Diocese in Czecho-Slovakia;

5. The Serbian Orthodox Vicariate of Skadar with its see in Skadar (Skutari);

6. The Serbian Orthodox Churches, Church-Congregations and parishes outside the borders of Yugoslavia (Churches in the Diaspora).

* * *"

Obviously, Articles 14 and 15 represent an exercise of the authority afforded by Article 16 to create and name and prescribe the sees of the 80-odd different dioceses of the Serbian Orthodox Church. The only distinction observed is that between dioceses in the Motherland and dioceses abroad. Such a distinction in no way compromises the authority so exercised. The historic fact alluded to is that only the Diocese of the U. S. and Canada has its own Constitution—all the other dioceses being governed by the Serbian Orthodox Constitution. Overlooked is the added fact that the diocesan constitution and all amendments thereto (prior to November 1963) were submitted to the Holy Assembly of Bishops for approval. This uniform practice speaks loudly to the effect that until the schism which occurred in 1963 Article 16 was taken by the Bishop and the people of American diocese to be operative as to them and to mean what it so clearly states. Further support of this view is to be found in the fact that on one occasion Bishop Dionisy proposed to the Holy Council of Bishops that the American diocese be expanded

to include South America and Africa with himself as its head with the rank of Metropolitan. He also pointed out that his existing diocese was territorially so vast and was growing so fast in numbers that he was experiencing difficulty in making needed visitations and administering it and suggested that he needed two or more assistant Bishops.

The court holds, therefore, that the Holy Assembly of Bishops acted within the limits of its constitutional authority in abolishing the Diocese of the U. S. and Canada and in creating and naming in its stead three new dioceses logically based upon geography. It follows that the Holy Assembly properly exercised its constitutional authority in naming the Bishops (including Dionisy) to head each of the three new dioceses and fixing their sees. The former diocese was without any authority to have accomplished the same result on its own motion if it had so desired. The idea of separation from the Mother Church which Bishop Dionisy came to embrace so fondly after the division of the diocese and his own suspension was the rankest sort of heresy to him a year or two before when it was proposed by one Bishop Nicolai. Such a radical departure strongly suggests a drowning person struggling for survival. Under such circumstances belated self-claimed independence and autonomy became but tools of convenience.

It can not be seriously contended that the suspension and trial of Bishop Dionisy was beyond the competence of the Holy Assembly of Bishops when he himself subscribed to the resolution of the Clergy Association stating that only the Holy Assembly of Bishops was competent to deal with the charges which had been lodged against him. The charges, incidentally, did not originate in Belgrade. They originated—all of them—in the United States and pertain to the Bishop's conduct here. In the formulation and trial of them commendable due process was observed. Nothing in the record in this case is even suggestive that

the charges were Communist-inspired or that the trial was Communist-influenced.

Of course when the former diocese was abolished it became bereft of any authority to act as a diocese. Thus when it purported to entertain the complaints from St. Sava and to invalidate both the December 1962 resolution and the Annual Meeting of January, 1964 its exertions add up to a complete nullity and the court so holds. It follows that the purported election of defendants as officers and committeemen of St. Sava and their subsequent assertion of authority with respect to all its affairs are illegal and wrongful from the beginning.

The schism which has been created among the members of St. Sava and numerous other Serbian Churches in this country is attempted to be justified on the ground that the Communists dominate and control the Mother Church in Serbia. Such a claim finds no credible support in the record of this case. One is led to wonder why the dissidents, if they were desirous of forming a National Serbian Church in the U. S. did not do so and forthrightly instead of tying their aspirations in that direction to a diocese no longer in existence and to a deposed Bishop desperately trying to preserve it.

It is clear from the evidence that defendants did wilfully and intentionally interfere with the lawful administration of the affairs of St. Sava. Much stress in argument is placed upon the presence and actions of Parma police in and around the church at the height of the controversy. No one on either side of this lawsuit would admit having sought the aid of the police or having been responsible for the padlocking of the church. But there were serious disorders and evidence of them was produced by both the new defendants and the defendants. The presence of police in that sort of situation is a normal phenomena. And when the public order and public peace appear to be threatened by riotous conduct between two contesting factions, municipal authorities could easily justify closing the church

on their own responsibility against both and keeping it closed until the issues could be judicially resolved.

It may be noticed at this point that the conduct of the Simich faction was not wholly commendable in all instances in the course of the turmoil. But they did not create disorder at the meetings of the Naperta faction. Nor did they indulge in violence as a means of correcting the unlawful take over. They sought their relief in this action.

It may be also noted that all of the principals from St. Sava who appeared and testified for one side or the other impressed the court as true devotees of the Serbian Orthodox Faith and as truly desirous that St. Sava shall continue and prosper under whatever regime it shall be operated. The strength of their faith should serve them well in the solution of whatever problems may follow in the wake of this decision.

Counsel for respective parties have filed excellent briefs in the case in lieu of oral argument. A goodly number of reported cases are cited. They have been read with interest and profit but most of them are found to be not helpful to a determination of the questions presented here. The principles enunciated nearly a century ago in *Watson v. Jones*, 80 U. S. (13 Wall.) 679 still have vitality in the law and have served as a guidepost in reaching the conclusions hereinbefore stated. It is believed that those conclusions are wholly compatible with the principles announced in *Watson*.

"The author of the text on "Religious Societies," found in 47 *O. Jur.* 2d 273 et seq., has successfully condensed the familiar law of the decided cases when he states as follows:

> "Religious societies have the right to establish tribunals for the decision of questions arising in the particular society or denomination, including all questions of faith and practice, and no member of such organization has a right to invoke the supervisory

power of a civil court over such a tribunal so long as none of his civil rights are invaded. Courts of law adjudicate ecclesiastical matters only when civil or property rights are involved and then only when their determination is a necessary incident to the adjudication of such rights, and will go no further in considering such matters than is necessary for the determination of the case before it. Even where property rights are involved, ecclesiastical questions are to be determined in accordance with the laws, customs and usages of the church involved. On the other hand, the doctrine of separation of church and state does not prevent civil courts from granting relief in church controversies, and although they will not interfere in matters of faith, the civil courts have always asserted the right to intervene in the temporal affairs of religious societies. While decisions on matters of faith by a competent church body require of its members individual voluntary obedience, still they are not effective against civil rights and obligations." (47 O. J. 2d 315, S. 36.)

And again where it is stated as follows:

"Generally speaking, in a civil court action, where a right is dependent upon a question of doctrine, discipline, ecclesiastical law, rule, custom or church government which has been decided by the proper tribunal within the organization, the civil court will accept that decision as conclusive and be governed by it in its application to the cases before it. The court will inquire only as to what are the rules and decisions of the church and its tribunals, and what parties or factions adhere to them, without questioning their wisdom or propriety, although it may consider whether the action is in fact "church" action, that is, whether the church body or officer had authority to make such action." (47 *O. Jur.* 2d 316, S. 37.)"

In the case at bar defendants urge that the case of *Romanian Orthodox Missionary Episcopate of America v.*

*Trutza et al.*, 205 F. 2d 107 (6th Circuit C. A.—1953) is determinative of this case. A statement of that case serves to show that in relation to the facts in the instant case too much is claimed for *Trutza*. One Moldovan, an alleged bishop of a Romanian religious society in the U. S. and Canada brought an action in the District Court to compel surrender to him of possession and control of the church property and to enjoin Trutza and his associates from using or expending church funds, publishing a church paper and representing that they were acting in behalf of the Episcopate. The late Judge Freed dismissed the complaint and entered judgment for the defendants, holding that but one question was presented, namely, whether the Episcopate had achieved a degree of autonomy sufficient to permit it to elect its own bishop. He held that it had.

In 1929 the Episcopate had been organized as a domestic religious society with many parishes in the U. S. and Canada without reference to the Romanian Orthodox Church in Bucharest. It adopted by-laws which clearly and emphatically declared itself to be completely autonomous and provided for the election by it of its Bishop. In some unexplained manner the by-laws were changed in 1936 to provide for acceptance of the authority of the Holy Synod in Romania to appoint the Episcopate's bishop. Some ten years or more later the Episcopate discovered (and the court found such to be the fact) that it was dealing, not with the Holy Synod and the Patriarch but with the Communistic government of Romania which was dictating the appointment of its bishop. The Episcopate then revoked the 1936 by-laws and re-established the by-laws as they were in 1932 when the Episcopate elected its own bishop. In 1947 the legation of the Romanian government informed the Episcopate that one Nica had been appointed as its bishop and in effect ordered it to accept him. After the Episcopate, through its Church Congress, acted to re-establish autonomy Moldovan and the group supporting him split off from the Episcopate, set up their own schismatic body and nominated Moldovan as bishop. He claimed to have been appointed by the Holy Synod.

It was under the foregoing state of facts (as appear in the report) that the Court of Appeals affirmed the District Court, holding that "under these circumstances the defendants were entitled to revoke their previous by-laws and to re-establish the by-laws of 1932." (Certiorari denied 346 U. S. 915.) The court also held that Moldovan had failed to prove that he had been either elected or consecrated as Bishop of the Episcopate—and commented derisively upon his "evasiveness and the sharp changes of front" manifested in his testimony.

The *Trutza* case had not been followed and seldom even judicially noticed. It is cited in one Ohio case—*Russian Orthodox Greek Catholic St. Peter and St. Paul's Church of Lorain, Ohio et al., v. Burdikoff et al.*, 117 O. A. 1 (Lorain Co.—1962)—to the point that there may be circumstances under which the patriarchy of the Mother Church will not be permitted to assert its authority over local parishes abroad. In any event we think the rule of Trutza is not to be deemed controlling in an entirely different fact pattern, as in the instant case.

There are other points made in the briefs which the court does not consider helpful to a correct determination of the issues here.

Defendants contend further that the more recent unreported case of *Serbian Orthodox Diocese of the U. S. and Canada v. Ocokoljich*, decided by the Circuit Court of Lake County, Ill., No. 63-1644, in 1964 and pleaded by defendants in their reply. We have been furnished with a copy of the court's opinion and its final decree was received in evidence during the trial. The Diocese of the U.S. and Canada, together with the Monastery of St. Sava, both being Illinois corporations instituted an action for declaratory judgment against Bishop Ocokoljich and the other Bishops who had been elected to head the three new dioceses asserting their right to retain control and possession of their respective properties. The Bishops filed an answer. Plaintiffs then moved for summary judgment

which motion was granted and a permanent injunction issued. The case is pending on appeal.

The court (per Yaeger, J.) stated the issue in that case to be whether the Illinois corporations in question must be "ousted from possession of property held and occupied by them for more than thirty-six years and devoted to uses contemplated (by their charters)." He added: "the question here involved is one of ownership of property." He held that the Bishops of the three new dioceses are not entitled, as a matter of law, to gain possession or control of the properties of the Serbian Orthodox Monastery of St. Sava, an Illinois corporation. In December 1944 the incorporated Diocese of the U. S. and Canada passed a resolution to the effect that its properties located at Libertyville, Illinois should be transferred to the Serbian Orthodox Monastery of St. Sava which was to be chartered as an Illinois corporation. The Monastery did become incorporated in April 1945. Thereafter all the real property located in Libertyville was conveyed to such new and separate corporation. By-laws were adopted which made the uses, sale or incumbrance of such real estate subject to the "consent and approval of the Diocesan Council headed by the Bishop and the Diocesan Church Convention." The final decree enjoined the three new bishops from interfering with "the administrative affairs, properties, moneys, assets or functions of the Serbian Eastern Orthodox Diocese for United States of America and Canada, a religious organization organized and existing under the laws of the State of Illinois, and Serbian Orthodox Monastery of Saint Sava, a general not-for-profit corporation organized and existing under the laws of the State of Illinois."

We have no quarrel with Judge Yaeger's decision. The question before him was not the same which confronts this court. Possession and control of diocesan property is an issue foreign to this Ohio case. Possession and control of the church property here is only incidentally

involved in the issue as to which of two factions are the duly elected officers and committeemen of St. Sava.

There are some conclusions stated in Judge Yaeger's opinion with respect to the relationship between the patriarchy and the former diocese which are at variance with ours. But on the facts presented by the record in the case at bar we are not moved by his opinion to retreat from the decisions heretofore stated. The Illinois decision if accepted in its full import is still not decisive of this case.

For all of the foregoing reasons the court finds for the plaintiff and against the defendants on the issues made by the petition; and further finds for the new defendants and against the defendants on the issues made by the cross-petition, to all of which defendants except.

Counsel are directed to prepare and submit a journal entry on or before May 10, 1965 consistently with this memorandum.

## JOURNAL ENTRY OF THE COURT OF COMMON PLEAS OF CUYAHOGA COUNTY

(May 26, 1965)

This cause came on to be heard before the Honorable Charles W. White, Judge, on the petition, the answer and cross-petition, the answer, as amended, of the new defendants to the cross-petition, the reply of defendants thereto, the evidence and briefs of counsel, oral argument having been waived.

On consideration thereof, and the Court being fully advised in the premises, the Court finds generally on the issues joined on the petition and on the issues joined on the cross-petition for the plaintiff and for the new defendants, respectively, and against the defendants.

Further, the Court finds specifically as follows:

1. Plaintiff is an Ohio incorporated religious society of the Serbian Orthodox Faith. Defendants are members

of said religious society. New defendants are also members of said religious society.

2. Prior to May 10, 1963, or thereabout, plaintiff was a part of the Diocese of the United States and Canada with its See in Libertyville, Illinois. Said Diocese is also an incorporated religious society under the laws of the State of Illinois. It operated under a written constitution approved by higher authority; and through a Bishop and a Diocesan Council. It is in turn subordinate to the authority of the Serbian Eastern Orthodox Church, with headquarters in Belgrade, Yugoslavia, in matters ecclesiastical and especially in respect to (1) the creation, naming, division and abolition of the separate dioceses, and (2) the election or appointment of Bishops to head the several dioceses at home and abroad.

3. The Serbian Orthodox Church, or Mother Church as it is sometimes referred to, is hierarchal and episcopal in structure. It is administered by a Holy Assembly of Bishops presided over by a Patriarch. The Holy Assembly of Bishops consists of all the Bishops of the several dioceses at home and abroad. The Patriarch is chosen by them from among their number. A lesser number of them are chosen to constitute the Holy Synod which serves as the executive arm of the Holy Assembly of Bishops under the presidency of the Patriarch. The Serbian Orthodox Church operates under a written constitution wherein the powers referred to in finding #2, *supra*, are fully reserved to the hierarchy.

4. On or about May 10, 1963, the Holy Assembly of Bishops decreed that the Diocese of the United States and Canada be abolished and that there be created in its stead three dioceses in the territorial United States and Canada to be known as the Eastern, Midwestern and Western Dioceses and based upon geographical lines. Territorial Canada was assigned to the Eastern Diocese and designated as the Eastern Diocese of the United States and Canada. New Bishops were elected to preside over the Eastern and

Western Dioceses. The incumbent Bishop of the former Diocese of the United States and Canada was designated as the head of the Midwestern Diocese with its See remaining in Libertyville, Illinois. The action thus taken was founded upon representations from members of the faith in America that the former Diocese was too large for proper administration what with a remarkable increase in both the number of Serbians in the United States and Canada and the number of churches serving them.

5. Shortly thereafter the Holy Assembly of Bishops or the Holy Synod or both "temporarily suspended" the Bishop of the Midwestern Diocese pending trial on numerous charges preferred against him from sources in America. Subsequently the charges were reduced to writing and duly served upon the Bishop well before trial; and he was given ample opportunity and an extension of time to answer the same but did not do so. Ultimately a trial was held at which he did not appear in person or by counsel and a decision made that he was guilty of misconduct and violations of his episcopal oath whereby he was divested of his episcopal and monastic ranks, removed from the roll of the hierarchy of the Serbian Orthodox Church and returned to the status of layman under his secular name.

6. Following the events stated in findings #4 and 5, *supra*, the Bishop in question not only refused to honor the decisions stated but has conducted himself in open defiance thereof. . . .

7. At the annual meeting of St. Sava Parish held December 2, 1962 a resolution was adopted fixing the dues for the year 1963 as provided in the parish by-laws. The resolution provided, in essence, that each member who had not previously contributed as much as $500 to the fund for the construction of the new church should contribute $10 per month for that purpose in addition to normal church dues of $13 per year. Construction of the new church was then nearing completion and the parish

was under an obligation to pay $4000 per month on a construction loan of some $400,000. The resolution expressly exempted from its operation students, persons over the age of 65 and other persons upon a showing that they were unable to pay according to its terms. Some such decision was necessary if the church was to fulfill its financial obligations in connection with the new structure, for the voluntary method had failed to produce the needed funds. The validity of the resolution was challenged by an action in this Court which was pending at the time scheduled for the annual meeting in December, 1963. The Court ordered a postponement of the annual meeting to January, 1964. On or about January 20, 1964 the Court rendered a decision upholding the calling and conduct of the meeting and the validity of the December 1962 Resolution adopted thereat. Following that event the annual meeting for 1963 was duly scheduled and the 1962 resolution was invoked in advance as a standard to determine who were "members in good standing" for the purpose of voting at such meeting. Some of the defendants were among the 332 members found to be qualified. The annual meeting convened on January 26, 1964, as prescribed by the Court order postponing the same from December, 1963. The new defendants—thirteen (13) in number—were elected as officers and committeemen at that time. They are, personally, as follows:

| | |
|---|---|
| Tom Simich | President |
| George Borato | Vice President |
| Branko Uzelac | Vice President |
| George Majstorovic | Secretary |
| Michael Zuberi | Treasurer |
| Mark Vukasovich | Financial Secretary |
| Paul Cosic | Committeeman |
| Steve Trukalo | Committeeman |
| John Sekulich | Committeeman |
| Ted Cosic | Vestryman |
| Ranko Majstorovic | Vestryman |
| Pete Uzelac | Vestryman |

Two hundred twenty (220) members in good standing were present and participated in the election. The persons elected proceeded forthwith to perform the duties appropriate to the offices to which they had been elected. Together they constituted the Executive Committee and the Auditing Committee of the church-congregation under its by-laws with full authority to administer the temporal affairs of the church subject only to decisions of the church assembly in that regard.

8. The adoption of the 1962 resolution was followed by some dissension on the part of the members who were opposed to it. Complaint was registered with the then Diocese of the United States and Canada. Dissension grew apace following the division in May, 1963 of the former single diocese into three separate areas. The division was marked by serious disorders from time to time. The period produced an edict from the diocesan authorities holding that the resolution was invalid and that the January 26, 1964 church assembly was also invalid whereby the consequences of both were null and void. Such conclusion was reached solely upon written complaint by several hundred members submitted to the diocesan authorities in Libertyville and actively supported by the priest in residence at the time. No investigation was conducted and no hearing was had. The Bishop and the Diocesan Council further decreed and ordered that the dissidents summon another annual meeting and conduct an election thereat without reference to the 1962 resolution. Such a meeting was convened two days later and resulted in the election of the defendants—twenty (20) in number—as officers and committeemen of St. Sava Church. Two weeks later a second meeting was called by the persons so elected for the purpose of ratifying the decisions made and election conducted on February 23. At this second meeting those present cast ballots in writing expressing support of the former diocese in refusing to accept the decisions of the hierarchy in Belgrade heretofore mentioned and encouraging continued defiance thereof.

9. The persons elected on February 23, 1964 obtained the approval of the authorities in Libertyville and proceeded to forcibly take over the duties of the places to which they had been elected, to the exclusion of the persons elected on January 26, 1964. They took over the church and the church-office and caused the church's bank accounts to be frozen. By this time strife with physical combat incidents had reached the point that on or about March 12, 1964 the civil authorities in the City of Parma caused the new church to be and remain closed against both sides in the controversy pending a court decision. The church has remained closed for fourteen (14) consecutive months.

The Court further finds that the plaintiff is entitled to the relief prayed for and the defendants are not entitled to the relief prayed for by their cross-petition.

It Is Therefore Ordered, Adjudged and Decreed that defendants Milan Naperta, Dobrosav Milisavljevic, Zivorad Bogojevic, Alex Matic, Boris Colich, Paul Yovanovic, Arsa Mandic, Savko Jovanovic, John Milovanovich, Gligorije Djuric, Vojislav Blagojevic, Stojan Stojanovic, Vladimir Lazukic, Vlastimir Vulich, Vladimir Mitic, Risto Janjic, Rajko Stijovic, Milenko Markovic, Vlajko Pukic and Radoslav Nedeljkovic, the several members of their families and all other members of St. Sava Serbian Orthodox Church who subscribe to their past actions and conduct be, and each of them hereby is, perpetually enjoined (a) from interfering in any manner whatsoever with the lawful conduct of the administration of such church by the officers and committeemen elected at the last annual meeting held on January 26, 1964, or their successors, (b) from any interference with the services of worship in said church, (c) from inciting, encouraging or participating in any disorder or riotous conduct in or around or in the immediate vicinity of said church and its appurtenances, (d) from causing or encouraging any damage to any of the property of said church, and (e) from threaten-

ing or doing bodily harm to any of the new defendants in their capacities as members of the Executive Committee, the Auditing Committee during their incumbency or otherwise; provided, however, that defendants, individually, are not hereby restrained from worshipping in said church or from exercising the rights of membership therein in accordance with the by-laws thereof.

It Is Further Ordered, Adjudged and Decreed that the defendants and each of them, the several members of their families and all other members of St. Sava Serbian Orthodox Church who subscribe to their past actions and conduct be, and they hereby are, perpetually enjoined (a) from in any manner representing or holding themselves out to be and acting as the duly elected and acting officers and committeemen of said church until and unless they or any of them shall accede to such place by an election lawfully held and conducted; (b) from committing any act or acts intended or calculated to affirm the continued existence of the former Diocese of the United States and Canada or its deposed Bishop and any continuing commitment of St. Sava Serbian Orthodox Church as an affiliate thereof or as a subordinate parish thereof, (c) from any act or actions intended or calculated to defy or repudiate the lawful authority of the Holy Assembly of Bishops in establishing and naming the Eastern Diocese of the United States and Canada and electing or appointing a Bishop to head the same;

It Is Further Ordered, Adjudged and Decreed that the defendants and each of them render an accounting within thirty (30) days from the filing hereof of any and all moneys or other property, if any, received by them from any source for and on behalf of plaintiff church during the period from February 23 to and including March 8, 1964; and that the defendants within five (5) days take such steps and actions as may be necessary to relieve and release the frozen condition of the bank account or accounts of St. Sava Serbian Orthodox Church with the

Cleveland Trust Company in favor of the plaintiff and the new parties defendant.

It Is Further Ordered that plaintiff and the new parties defendant recover from the defendants their costs herein taxed for which judgment is hereby rendered against the defendants.

To all of which defendants except.

CHAS. W. WHITE,
*Judge.*

## OPINION OF THE COURT OF APPEALS FOR THE EIGHTH JUDICIAL DISTRICT.

(April 7, 1966)

DUFFEY, J.

This is an appeal on questions of law and fact from a judgment of the Common Pleas Court of Cuyahoga County. That court granted a permanent injunction against defendants-appellants, restraining them from claiming office in St. Sava Serbian Orthodox Church, interfering with the conduct of church officers, requiring an accounting and certain other relief.

St. Sava Serbian Orthodox Church is an Ohio corporation not for profit. The petition is in the name of the church. It alleges, in essence, that defendants-appellants illegally claim to hold corporate offices and are illegally acting in various ways to interfere with the conduct of church affairs. A general denial and so-called "cross-petition" were filed. The cross-petition names as defendants certain individuals, alleges that defendants-appellants are the true, lawful officers of St. Sava Church, and that the new defendants are the ones who illegally claim and are attempting to exercise corporate authority in the church.

At the outside, we again remind all parties that a man's beliefs, and his acceptance or rejection of ecclesi-

astical authority, cannot be decided for him. By coming into a civil court, only the control of buildings and material things can be effected. Such control can be used as a weapon to deepen the wounds of controversy, but of itself cannot help solve religious differences. Everyone should clearly understand that no court of civil law can restore unity to the congregation of St. Sava Church.

In our opinion, the petition is well taken and the church is entitled to injunctive relief against the defendants-appellants. The cross-petition is not well taken and must be dismissed.

An election of officers was held at the regular annual meeting on December 2, 1962. That election was apparently proper and has never been challenged. Accordingly, it is the beginning point in the statement of the present status of the church.

The executive committee members are "trustees" of the corporation within the meaning of Section 1702.01, Revised Code. There is no provision in the corporate articles or regulations (bylaws) as to the effect of an invalid election or failure to hold an election of officers as that would relate to the term of previously elected officers. Therefore, under Section 1702.28, Revised Code, a trustee (executive committee member) holds office "until his successor is elected."

At the 1962 meeting, a resolution was purportedly adopted imposing an obligation upon some members to pay up to $500. That resolution was the subject of litigation in case No. 26957. In that case this court held the resolution invalid. The entire record of that case was added to the evidence in this case by stipulation and grant of leave, pursuant to Section 2505.21, Revised Code. Upon review of all the evidence before us in the present case, we again determine that the resolution is invalid.

The 1962 resolution was used as the basis for determining voting rights at the next meeting held January 26, 1964. The election held at that meeting was therefore

invalid. Special meetings were purportedly held on February 23, 1964, and March 8, 1964. Under Part Three, Article I of the bylaws, a special meeting must be called in the same manner as a regular meeting. The requirements include a written notice or invitation, and the notice must be at least thirty days before the date of the meeting. See Part Three, Article I, Section 3, and Section 2E) and F). A shorter notice period may be set by the executive committee. Part Three, Article I, Section 3B).

The February 23, 1964, meeting was improperly called for a variety of reasons, including lack of written notice. The March 8, 1964, meeting was invalid for a variety of reasons, including the lack of a 30-day notice or permission for a shorter notice.

Accordingly, it follows that the persons elected at the meeting of December 2, 1962, continue to hold office, and were authorized to act upon behalf of the corporation, including the filing of this suit. The evidence supports the Common Pleas Court findings that defendants-appellants have illegally and improperly interfered with the conduct of the affairs of the church. An injunction, essentially in the form of the *operative* provisions of the entry below, will be granted. The entry should exclude references to the January 26, 1964, election, and the references in part (b) and (c) on page eight of the Common Pleas entry.

For the reasons already stated, defendants-appellants do not hold office in the corporation. The underlying basis of the entire "cross-petition" against the new defendants is therefore unsupported on its merits.

The propriety of the "cross-petition" rests upon Section 2309.16, Revised Code. That section provides in part:

> "A counterclaim is a cause of action existing in favor of one or more defendants against one or more plaintiffs or one or more defendants, or both, between whom a several judgment might be had in the action, and arising out of the contract or transaction set forth in the petition as the foundation of the plaintiff's

> claim; or connected with the subject of the action or arising out of contract or ascertained by the decision of a court."

Since a counterclaim presupposes a pending action, it is apparent that the references to plaintiffs and defendants refer to the parties to the *original proceeding*. A counterclaim must, therefore, be a cause of action in one of the parties to the original proceeding against one of the parties to the original proceeding. Of course, if such a cause of action is asserted by way of counterclaim, and that cause of action requires the addition of a new party, the new party may be added. Sections 2309.17 and 2309.18, Revised Code. However those statutes permit the addition of a new party to a "counterclaim" and are, therefore, controlled by the basic counterclaim statute, Section 2309.16, Revised Code. On the other hand, our use of the word "original" is not intended to limit the operation of the statute to claims against parties originally *named*. There may be a person not named originally who must or may be joined as a party plaintiff or defendant to the original proceeding. If properly made a party, such a person falls within the counterclaim statute, and a claim may be asserted against him by any other party—subject to the other limitations relating to the same transaction, subject of action, etc., found in the statute.

In the present case, the counterclaim does not involve a claim against the corporation or against any of the original parties defendants to the corporation's action. It constitutes an attempt at third-party practice. While such joinder of causes and parties would frequently facilitate litigation and avoid unnecessary duplication, it has not yet been adopted in Ohio.

An entry granting an injunction in accordance with the petition and this decision, and ordering the dismissal of the counterclaim, may be submitted.

BRYANT, P. J., and DUFFY, J., concur.

## JOURNAL ENTRY OF THE COURT OF APPEALS FOR THE EIGHTH JUDICIAL DISTRICT.

(October 10, 1966.)

This cause came on to be heard upon an appeal on questions of law and fact, the original papers, transcript, transcript of the docket and journal entries in the Court of Common Pleas of Cuyahoga County, Ohio, and briefs, and was argued by counsel for both Appellant and Appellee and the same was submitted to this Court.

Upon Consideration Whereof this Court finds:

1. That St. Sava Serbian Orthodox Church of Cleveland, Ohio is an Ohio non-profit corporation.

2. That an election of officers was held at the regular annual meeting on December 2, 1962, and that election was proper and has never been challenged.

3. That since the resolution passed at the December 2, 1962 meeting has been held invalid by this Court in Case No. 26957, and we again determine it to be invalid here, and since that resolution was made the basis of voting rights at the January 26, 1964 meeting; it follows that the election held at the January 26, 1964 meeting was invalid.

4. That the special meetings of February 23, 1964 and March 8, 1964, are invalid because of lack of notice required under the church corporation code of regulations (by-laws) and for other reasons.

5. That the officers of the church, elected at the December 2, 1962 meeting are the only presently valid officers of the church and shall so remain, until their successors are elected, pursuant to Section 1701.28 Revised Code and the by-laws of the St. Sava Serbian Orthodox Church of Cleveland, Ohio; and until that time those officers shall be authorized to continue acting on behalf of the corporation as they have been in the past.

6. That Defendants-Appellants have illegally and improperly interfered with the conduct of the affairs of the church; that Defendants-Appellants do not hold office in the church corporation; that the Petition of Plaintiff is well taken and the church is therefore entitled to injunctive relief against Defendants-Appellants; and that the Cross-Petition of Defendants-Appellants is not a claim against the corporation nor against any of the original parties defendants, pursuant to Section 2309.16, Revised Code, and as such is not well taken and must be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Petition of Plaintiff is well taken and Plaintiff is entitled to relief; that Defendants are not entitled to the relief prayed for in their Cross-Petition and it is accordingly dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants, Milan Naperta, Dobrosav Milisavljevic, Zivorad Bogojevic, Alex Matic, Boris Colich, Paul Yovanovic, Arsa Mandic, Savko Jovanovic, John Milovanovich, Gligorije Djuric, Vojislav Blagojevic, Stojan Stojanovic, Vladimir Lazukic, Vlastimir Vulich, Vladimir Mitic, Risto Janjic, Rajko Stijovic, Milenko Markovic, Vlajko Pukic and Radoslav Nedeljkovic, the several members of their families and all other members of St. Sava Serbian Orthodox Church who subscribe to their past actions and conduct be, and each of them hereby is, perpetually enjoined (a) from interfering in any manner whatsoever with the lawful conduct of the administration of such church by the present officers and committeemen or their successors, (b) from any interference with the services of worship in said church, (c) from inciting, encouraging or participating in any disorder or riotous conduct in or around or in the immediate vicinity of said church and its appurtenances, (d) from causing or encouraging any damage to any of the property of said church, and (e) from threatening or doing bodily harm to any of the new defendants in their

capacities as members of the Executive Committee, the Auditing Committee during their incumbency or otherwise; provided, however, that defendants, individually are not hereby restrained from worshipping in said church or from exercising the rights of membership therein in accordance with the by-laws thereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants and each of them, the several members of their families and all other members of St. Sava Serbian Orthodox Church who subscribe to their past actions and conduct be, and they hereby are, perpetually enjoined from in any manner representing or holding themselves out to be and acting as the duly elected and acting officers and committeemen of said church until and unless they or any of them shall accede to such place by an election lawfully held and conducted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants and each of them render an accounting within thirty (30) days from the filing hereof of any and all moneys or other property, if any, received by them from any source for and on behalf of plaintiff church during the period from February 23 to and including March 8, 1964; and that the defendants within five (5) days take such steps and actions as may be necessary to relieve and release the frozen condition of the bank account or accounts of St. Sava Serbian Orthodox Church with the Cleveland Trust Company in favor of the plaintiff and the new parties defendants.

To all of which Defendants-Appellants, by counsel, except.

## JOURNAL ENTRY NUNC PRO TUNC OF THE COURT OF APPEALS FOR THE EIGHTH JUDICIAL DISTRICT.

This cause came on to be heard and the court being duly advised finds that the entry of October 10, 1966, does not clearly reflect the intention of the court as shown by

its opinion, with reference to the persons presently authorized to hold office in, and exercise the powers of the church corporation.

The court finds, and the parties agree, that the following persons were elected at or appointed as a result of the church meeting of December 2, 1962, to the following designated offices:

Executive Committee

| | |
|---|---|
| Tom Simich | President |
| George Borato | Vice President |
| Branko Uzelac | Vice President |
| Djuro Majstorovic | Secretary |
| Michael Zuber | Treasurer |
| Alexander Zugich | Fin. Secretary |
| Stojan Stojanovic | Vestryman |
| Vlada Ilazukic | Vestryman |
| Ranko Majstorovic | Vestryman |
| Vlada Alexsandrovic | Vestryman |
| Todr Cosic | Vestryman |
| Gligorije Djuric | Vestryman |
| Pavle Cosic | Committeeman |
| Alexander Matic | Committeeman |
| Pavle Jovanovic | Committeeman |

Audit Committee

| | |
|---|---|
| Milo Djakovich | |
| Nikola Vurdelja, | deceased, Risto Janic appointed to fill vacancy |
| Dragan Cupkovich | |
| Branko Uscumljic | |
| Dusan Yovich | |

The court further finds that except as stated in this entry, the defendants-appellants do not now hold office in the church corporation, and are not now entitled to exercise the powers of the various offices, and should be enjoined from any illegal interference with the conduct of the affairs of the church.

Wherefore, it is ordered that the persons stated be, and are hereby, authorized to exercise the powers granted to the designated offices by the statutes of Ohio and the bylaws of the corporation until such time as their successors are duly elected, but subject to the order of any court having jurisdiction of the parties or the corporation.

It is further ordered that except as the persons named herein are in the exercise of the authority granted by this entry, the defendants-appellants shall continue to be subject to the terms of the injunction provided by the entry of October 10, 1966.

This entry is made nunc pro tunc, modifying and correcting the entry of October 10, 1966.

SAVKO JOVANOVIC, ET AL.,
VS.
TOM SIMICH, ET AL.,
(COMMON PLEAS NO. 790246)

## SEPARATE FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE COURT OF COMMON PLEAS OF CUYAHOGA COUNTY.

(January 23, 1964)

Plaintiff having timely requested in writing that the Court state in writing the facts found separately from the conclusions of law, the Court does so as follows:

### FINDING OF FACT.

From a preponderance of the evidence, the Court finds the facts to be as follows:

1. That defendant, St. Sava Eastern Orthodox Church of Cleveland, Ohio, is a religious corporation, duly organized under the laws of the State of Ohio.

2. That defendant, Toni Stanich, is a member of the St. Sava Eastern Orthodox Church and the President of the Executive Committee of said church, and also President of the church congregation.

3. That by and under the authority of the constitution of the Serbian Orthodox Diocese, St. Sava Eastern Orthodox Church of Cleveland, Ohio has adopted By-Laws, which provide for the orderly administration of church and membership affairs.

4. That by and pursuant to said By-Laws, an annual meeting was held on December 2, 1962. That such meeting was properly called and properly held.

5. That a quorum was present for said meeting.

The Court further finds:

6. That the resolution passed at the annual meeting of December 2, 1962 was properly passed and is valid.

7. That no written complaint, as provided for in the By-Laws, had been properly filed.

CONCLUSION OF LAW

From the foregoing facts, defendants are entitled as a matter of law to have plaintiff's petition for injunction denied.

See By-Laws of the St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, Joint Exhibit #1.

Injunction is an extraordinary remedy and is used sparingly and cautiously. Under the facts of this case the granting of injunctive relief was not warranted. See 29 Ohio Juris 2d-Sec. 15 p. 179; *Goodall v. Crafton* 33 O.St. 271. *Local Union No. 118 of the Utility Workers Union of America, AFL-CIO v. Utility Workers Union of America, AFL-CIO*, 162 N.E. 2d 524; *International Union v. Owens*, 150 O. St. 94.

Donald F. Lybarger, J.

## JOURNAL ENTRY OF THE COURT OF COMMON PLEAS OF CUYAHOGA COUNTY:

(January 23, 1964).

This cause came on for trial on the 14th day of January, 1964, by the Court, and on consideration of the pleadings and the evidence the Court finds that plaintiff's petition for injunction is denied, at plaintiff's costs.

## OPINION OF THE COURT OF APPEALS FOR THE EIGHTH JUDICIAL DISTRICT IN CASE NO. 26057

(March 22, 1966.)

DUFFEY, J.

This very unfortunate litigation began with a petition for an injunction in the Common Pleas Court in Cuyahoga County. The lower court denied any relief and the case is now on appeal on questions of law only. A closely related case is also before the court. Some of the evidence in this case has been qualified, even contradicted, by evidence in the other pending case. However, the decision here must be based upon the *evidence of record in this action only*. A number of matters referred to in the briefs and arguments are not of record in this action and cannot be considered.

In reviewing the evidence, it is important to note that in an appeal on questions of law only the appellate court is required to respect the factual determinations of the trial court. Accordingly, we have carefully selected that evidence which is most favorable to appellee Simich.

In December 1962, appellant Savko Jovanovic was a member in good standing of St. Sava Serbian Orthodox Church of Cleveland, Ohio. Tom Simich was the president of the church congregation and of its executive committee. The annual meeting of the church was called for December 2, 1962, and convened. A proposed resolution was reported out of the executive committee. This resolution

recited the construction of a new church, school, and rectory, the incurring of a $400,000 debt, and that the regular income and contributions to the church building fund had not been adequate. Pertinent portions of the resolution provide:

"*It is Resolved:*

"That every member of the Serbian Orthodox General Assembly St. Sava in Cleveland, who has not contributed for the construction of the new church, school and rectory, $500.00 or more, from 1 January 1963, beside the regular monthly dues of $1.00 pays for the payment of the above-mentioned debt $10.00 per month, until the sum of $500.00 is attained;

"It is further resolved: that a member who pays no heed to this resolution, loses all membership rights prescribed in the Constitution and By-Laws of the General Assembly.

"This resolution does not encompass that member of the General Assembly who has attained 65 years of age or more, whose monthly income is not more than $125.00, nor that member who is an invalid and in impoverished condition.

"It is further resolved that a committee be chosen of three members who will investigate and establish the condition of those members who believe that this resolution does not apply to them and to report on these to the church board.

"This resolution does not relate to those members who have already paid their investment of $500.00.

"Members who have paid in less than 500 dollars, must besides the dues only continue to pay at the rate of 10 dollars per month until the sum of 500 dollars is paid.

"Members who until today have not paid anything are requested to pay within a period of five years

at the rate of 10 dollars per month beside the regular dues which is in all 11 dollars per month. The opportunity and possibility is given that everyone participate and not feel it, so to speak. Who can give more and more quickly, the better it is for the church for less interest will have to be paid on the loan.

"Members who have invested their pledges of 500 dollars are requested to help further when and as much as they can."

The resolution was adopted by a vote of 48 for and 20 against. The petition alleges that this resolution will be enforced and be used to deny membership rights, in particular the right to vote at the annual meetings of the church. The resolution has been and is being enforced. Appellant and others in the same position have been and will be denied the right to vote solely because of failure to comply with the obligations of this resolution. The prayer and petition ask that the appellee be restrained from denying appellant and others of his class membership rights and from enforcing the resolution of December 2, 1962. The reply requests such other relief as may be appropriate.

Between the December 2, 1962, meeting of the church membership and the next annual meeting, a deep religious controversy arose. In May 1963, the then Serbian Orthodox Bishop was purportedly suspended by higher ecclesiastical authority. In addition, the previous diocese for United States and Canada, incorporated as an Illinois corporation, was also purportedly split into three dioceses. St. Sava comes within the ecclesiastical jurisdiction of one of these new dioceses, and a new bishop was purportedly appointed with jurisdiction over that diocese. This tragic controversy is not apparent in the trial court record of this case, although it is the root and stem of the controversy in the companion case No. 27520.

It is important at the outset to strongly state to both factions that the ecclesiastical controversy cannot be re-

solved in a court of civil law. This court is not in any respect passing upon the religious, ecclesiastical authority of any patriarch, bishop or other clerical or nonclerical person.

On the other hand, St. Sava Serbian Orthodox Church of Cleveland, Ohio, is also a corporation organized under the laws of Ohio. The manner and procedure by which it carries on its corporate activities is controlled by the statutes of Ohio, the corporation's articles of incorporation and its regulations. St. Sava has adopted a set of bylaws. Thus, this court can and will apply the civil law pertaining to corporations as established in Chapter 1702, Revised Code, and the regulations adopted by the corporation in its bylaws. There is much evidence tending to show certain customs or practices in the conduct of the church's affairs. However, in reviewing action on corporate matters as opposed to ecclesiastical affairs, the methods and procedures are established by statute and by law. In the face of a challenge in court, no custom or practice which conflicts with the prescribed corporate procedure can be valid.

In our opinion, the resolution requiring the payment of funds in addition to regular dues as adopted at the December 2, 1962, annual meeting, was not validly adopted for at least three reasons, each of which by itself would invalidate it. There was no proper quorum to do business. It was not passed by the vote required. It constitutes an attempt to amend the corporation's bylaws and as such was not validly adopted.

The bylaws require a quorum of one-fourth of the members in good standing. Part Three, Article I, Section 14 of the bylaws. The record here does not support a finding of a quorum at the December 2, 1962, meeting.

There are three methods by which membership in the church can be obtained:

(1) All persons who were members of the church in good standing as of the day the bylaws were adopted Part Eight, Article I, Section 1.

(2) All persons who thereafter applied and were accepted in accordance with the provisions of the bylaws Part Two, Article I.

(3) A wife of a member who herself is Eastern Orthodox, and who becomes a member of the "Circle of Serbian Sisters." Part Two, Article II, Section 2.

Membership eligibility extends to all adults over 18. Women are eligible for full membership including voting rights. Part Two, Article I, Sections 1 and 2. A wife may be a member without the consent of her husband.

As of December 2, 1962 there were apparently about 727 members of the church. It is not clear whether this figure included all female members, especially those qualifying under the "Serbian Sisters" exception to application requirements. Further, there is no membership book kept in the manner required by Section 1702.13 Revised Code. On the other hand, not all of the members were members in good standing on December 2, 1962, and entitled to vote. A member who has not paid his dues for three months directly preceding an assembly meeting is denied the right to vote. Part Two, Article III, Section 4 of the bylaws. In our opinion, it necessarily follows that one who, not being exempted from dues payment, has failed to pay his dues for three or more months before a meeting is not to be counted in determining either (a) the total membership for purposes of computing the one-fourth necessary for a quorum or (b) the number present to constitute a quorum.

There were 485 members who on November 30, 1962 had paid their dues. Another 15 paid dues prior to commencement of the meeting on December 2. Additional members paid their dues prior to the actual vote on the resolution. It would also appear that, in counting the num-

ber who had paid dues, the fact that ineligibility required nonpayment for at least three months was apparently ignored. Thus the figure of 500 members in good standing with paid-up dues is the minimum as of December 2, 1962.

To this minimum of 500 dues-paid members must be added those who were exempt from paying dues. These are (1) members of the Circle of Serbian Sisters, (2) persons in the Armed Services, (3) students, (4) persons who requested and were granted release from dues by the assembly. See Part Two, Article II, Sections 2 and 3 of the bylaws. There is no evidence of the number of members who would fall into the last three categories. However, there is positive evidence that on December 2, 1962, there were 150 members of the Circle of Serbian Sisters (R. 284). An earlier witness, Mrs. Simich, had testified to a rough estimate of 120 members, but she admitted that she smallest number of members in good standing on Decemdid not actually know. On the evidence, therefore, the ber 2, 1962, had to be something in excess of 650.

The evidence indicates that women were not usually considered in determining the total membership in connection with the computation of the quorum requirement, i.e., one-fourth of the members. On the other hand, women were clearly counted in determining the number of members present at a meeting. The accuracy of the testimony as to the custom of not counting women in determining the one-fourth requirement is very dubious. The church has a number of dues-paying women members, and, clearly, the dues books were the reference point in testimony as to the total membership. However, accepting the testimony at its face value, such a custom cannot prevail over the clear provisions of the corporation's bylaws. Membership qualifications depend on the bylaws, and their provisions are positive and affirmative with respect to the status of women.

Turning now to the evidence of the number present at the December 2, 1962, meeting, it is agreed that the

meeting commenced with at most 112 members. (Two of these had apparently not paid their dues—R. 119.) Thereafter, members came and went, and eventually a number of "Serbian Sisters" joined the meeting. There is evidence that a second count was taken. The most extreme figures given by any witness are those of Paul Cosic. He stated that he counted one side of the hall, that he stopped counting at 73, but he estimated there may have been 15 more on his side. Mr. Cosic's testimony as to the number on the other side of the hall is very vague. Mr. Zuber's testimony supports approximately 70. Assuming, although not necessarily finding, that 161 members were present, this is not one-fourth of 650. In our opinion, even pushing the total membership down to the lowest point on the evidence and stretching the membership present to the highest point, we cannot find that a quorum as required by the bylaws was present.

The actual vote cast was insufficient. Part Three, Article I, Section 30 of the bylaws provides:

> "All decisions of the Assemblies shall be brought forth by a majority vote of the members *present*. In the event there is a tie, the vote of the presiding officer shall decide. This applies in all instances of decision among the committees." (Emphasis added.)

The evidence clearly established that the resolution received a vote of 48 for and 20 against. It is, therefore, apparent that the resolution was not adopted by a majority of the members present. Perhaps in past actions the church members have accepted decisions which were made on the basis of the majority of the members present and voting. However, the bylaws and statutes of Ohio are clear. See Section 1702.22 (B), Revised Code. In the face of a legal challenge, the requirement of the majority of those present must be met.

Regardless of the vote required and of the absence of a quorum, the resolution itself constituted an illegal attempt to amend the bylaws. Appellees concede that the

steps necessary to accomplish a valid amendment were not followed. Accordingly, there is no need to discuss those steps. However, appellees contend that the bylaws authorize the setting of dues for the forthcoming year at the annual meeting and that the resolution was simply such a setting of dues. We cannot agree.

The only financial obligation authorized under the bylaws is the imposition of monthly dues for one year in advance. Part Two, Article II, Section 1. A member cannot be made liable for any debt of the corporation or obligated to pay any sum other than dues. A member can, of course, make voluntary contributions. The income from dues may be expended for any proper church purpose, including the payment of the debts of the corporation. In the present case, the dues had, for many years, been set at $13—$1 monthly and $1 additional at the annual meeting. The church then incurred a mortgage debt of some $400,000 in connection with new construction. An effort was apparently made to obtain substantial contributions from the members. The dues, income and voluntary contributions were not large enough to meet the obligations of the church. The resolution in question is the result of efforts to raise additional funds. There was clearly a belief on the part of some members that the burden was not being fairly shared.

The resolution here attempts to require the payment of a fixed sum of $500, although permitting monthly installments of not less than $10. It might be noted that the funds so derived are "earmarked," i.e., stated to be for payment of the debt rather than simply added to the church treasury. We do not doubt that dues could be raised $10 per month for one year, that this could be collected from all members, and that the proceeds could be used to pay the church debt. The point is that the present resolution was an effort to impose a specific obligation.

In addition, and perhaps more importantly, the resolution is unequal, nonuniform and retrospective in its ap-

plication. The additional burden is imposed only upon those members who have not previously made gifts amounting to $500 or more. This classification of members based upon their previous voluntary donations is, when tied to membership rights, unauthorized by the bylaws. Dues are required to be set prospectively and applied equally to all members. Even if this resolution were viewed as an attempted grant of exemption from prospective dues, the bylaws do not permit an exemption based upon previous gifts. See Part Two, Article II, Sections 1, 2 and 3.

The last question presented is whether there are any internal corporate remedies that appellants were required to fulfill before invoking court action. The pertinent provisions of the bylaws are Part Five, Article I, Sections 2 and 10:

> "2. Complaints against the decisions of the Regular Annual or Special Assembly Meetings shall be made to the higher Diocean (sic) authorities.
>
> "10. Complaints shall be filed within thirty days of the decision in question counting from the day that the plaintiff learned of the decision and not later than one year from the day the decision was brought forth."

Before the one-year period expired, it became impossible to know who or what was the "higher Diocean (sic) authorities." In May 1963, the then diocese was purportedly split into three parts, and the then bishop purportedly suspended by ecclesiastical authority in Belgrade, Yugoslavia. Whether this would affect the *corporate* position of the Illinois corporation is an issue of law not yet resolved.

Secondly, any complaint to either of the "higher Diocean (sic) authorities" became moot. Within the one-year period, both the previous and the newly appointed bishops stated their positions on the validity of the resolution—one considering it valid, one considering it invalid.

Appellees did not accept the latter ruling, and the appellants challenge the former.

Finally, the resolution in question cannot be considered a "decision" of the annual assembly. It was not adopted by the required vote, there was no quorum, and the steps necessary for an amendment to the bylaws were not followed.

Under these circumstances, we believe that the internal corporate remedy did not constitute a bar to relief in the Common Pleas Court.

Since the filing of the suit, an election of officers was held. The right to vote was based upon the resolution of December 2, 1962. It is apparent that in providing appellants with relief against the resolution, the election is also affected. While the present acting officers should continue to conduct the ordinary affairs of the corporation, a new election must be held. Rather than issue an injunction in this court, the case will be remanded to the Common Pleas Court for the granting of appropriate relief. The order of remand will include instructions to grant a permanent injunction against the enforcement of the resolution, and to oversee, by a master commissioner or otherwise, (1) the preparation of a membership book as provided by Section 1702.13, Revised Code, (2) the opportunity for all members to pay all past and current dues, based upon the previous rate of $1 per month, and (3) the call of a membership meeting and the conduct of an election.

The judgment of the Common Pleas Court will be reversed and vacated, and the case remanded with instructions.

BRYANT, *P.J.*, and DUFFY, *J.*, concur.

## JOURNAL ENTRY OF THE COURT OF APPEALS FOR THE EIGHTH JUDICIAL DISTRICT.

(May 26, 1966.)

This cause came on to be heard as an appeal on questions of law upon the record, briefs and argument of counsel,

Upon consideration thereof, the Court finds error to the prejudice of appellants. The resolution adopted at the December 2, 1962, annual membership meeting of St. Sava Serbian Orthodox Church of Cleveland, Ohio, requiring the payment of funds in addition to regular dues, is invalid; appellants' rights to vote at the election of officers were illegally denied; and appellants' right to appropriate equitable relief was improperly refused, all for the reasons stated in the decision of this Court dated March 22, 1966. In particular, appellants have been illegally denied the right to vote as members of the Church Corporation solely because of failure to comply with the provisions of the invalid resolution. The Court further finds that appellants have been deprived of substantial rights by the election of officers of the corporation on the basis of invalid voting restrictions. A permanent injunction should issue restraining appellees from enforcing or attempting to enforce that resolution and from using or attempting to use it as a basis for determining rights and membership in the Church Corporation. To fully effectuate appellants' rights, further equitable relief should be granted requiring that a new election of officers be held.

It is therefore ordered, adjudged and decreed that the judgment of the Court of Common Pleas of Cuyahoga County be and hereby is reversed and vacated and the cause be and hereby is remanded to that Court with instructions to:

(1) Grant a permanent injunction prohibiting the enforcement of the resolution of December 2, 1962, relating to the payment of funds in addition to regular dues, and

the denial to appellants and others similarly situated of their right to vote because of their failure to comply with that resolution.

(2) Require the holding of an election of officers in accordance with the bylaws of the Church Corporation and the law of Ohio, such election to be held at such time as the Court of Common Pleas may determine to be appropriate.

(3) "Oversee," by a Master Commissioner or otherwise, (a) the preparation of a membership book as provided by Section 1702.13, Revised Code, (b) the determination of individual claims to be a member or for a reinstatement as a member of the Church Corporation, and (c) the call of a membership meeting and the conduct of the election.

(4) Hold such further proceedings as may be in accordance with law.

Exceptions to all parties.

## JOURNAL ENTRY OF THE COURT OF COMMON PLEAS OF CUYAHOGA COUNTY

(March 30, 1967)

Pursuant to the decision and order of the Court of Appeals of Cuyahoga County, Ohio, this Court again declares that the resolution adopted at the December 2, 1962 annual meeting of St. Sava Eastern Orthodox Church of Cleveland, Ohio, is invalid and a permanent injunction is herewith issued restraining enforcement of that resolution.

In its journal entry, the Court of Appeals declared that "to fully effectuate appellants' rights, further relief should be granted requiring that a new election of officers be held." That Court, upon remand, further instructed the trial court to:

1. Hold an election of officers in accordance with the by-laws of the church corporation and law of Ohio, such election to be held at such time as the Court of Common Pleas may determine to be appropriate.

2. Oversee, by master commissioner or otherwise

   (a) The preparation of a membership book provided by 1702.13 Revised Code.

   (b) The determination of individual claims to be a member or for reinstatement as a member of the church corporation.

   (c) The call of a membership meeting and the conduct of an election.

3. Hold such further proceedings as may be in accordance with law.

By agreement of the parties, Mr. Clarence C. Fowerbaugh was named Special Commissioner to be paid at the rate of $150.00 per day and expenses, each party to pay one-half thereof.

Numerous conferences were held by the commissioner with representatives of each faction as well as between the Court and counsel. Many agreements were arrived at for the conduct of the election and the formation of the membership book. To a great extent these agreements required the Court to modify and amend the orders expressed in its journal entry of January 3, 1967. These modifications and amendments took the form of additional instructions to the commissioner. Among the agreements arrived at were the following:

1. Because of the disorder occurring at the July 6, 1963 assembly of this congregation, each faction agreed to name a slate of candidates for the election.

2. The election would be by secret ballot under the direction of the commissioner. He was empowered to employ monitors and auditors to assist him.

3. Upon oral hearing held on February 6, 1967, counsel stipulated that the Court could make its determination of individual claims to be a member or for reinstatement as a member in the church corporation without additional oral hearings but through the use of affidavits, minutes of meetings and other pertinent exhibits.

In the course of these proceedings, the defendant-appellees moved that the Court disallow plaintiff-appellants' right to vote as church members in this election for the reason that they had renounced the Eastern Orthodox Faith. This contention was asserted pursuant to Part Two, Article IV, Section 1-C of the church by-laws.

Counsel submitted extensive briefs on this subject and an oral hearing was had on February 6, 1967. This issue was not raised in the original pleadings in this case, and was not included in the Court of Appeals remand instructions. In accordance with the specific mandate of the Court of Appeals, the trial Court was required to perform its duties as directed without intervention of its own discretion and without hearing additional evidence on other subjects. The motion was overruled.

Also, defendant-appellees maintained that according to the by-laws where a member had not paid his dues for a period of six months or more, his membership was automatically terminated. In interpreting the total provisions of the by-laws and law of Ohio, the Court concluded that termination of membership in the church corporation was not automatic upon non-payment of dues for a period of six months. Upon non-payment for that period or more, unless specific procedures for expulsion required by the by-laws were complied with, the right of church membership was not automatically terminated and upon payment of delinquent dues from April 22, 1956 to December 31, 1966 that member or Serbian Sister could vote in this election.

Following the disorder occurring at the July 1963 monthly assembly, it became apparent that the unfortunate division in this congregation became total and apparently irreconcilable. Thereafter each faction conducted its own church services and recruited additional members to that faction. Until March 7, 1967, when Robert E. Jakovich filed a motion for judicial determination of his right to be accepted as a voting member in the church congregation, neither faction requested the Court to make a determination of membership and voting rights of members recruited by each faction. Mr. Jakovich applied for membership with the "Simich Faction" in March 1965 and his wife applied for membership in the Serbian Sisters in May 1966. From the evidence presented the Court concluded that since there had been no monthly, special or general assembly meetings of the St. Sava Church Congregation after July 6, 1963, no meeting of the Church Board since October 10, 1963 and no meeting of the Executive Committee from October 25, 1963 until March 6, 1967, membership in the St. Sava congregation could not be obtained subsequent to July 6, 1963. The application of Mr. Jakovich to be accepted as a voting member was denied.

In preparing the ballots, the Court ordered the commissioner to provide a space for write-in candidates as to each office. The reason for this was to accommodate the preference of members, if any, that were not aligned with either faction.

Using all available records, the commissioner, under the direction of the Court, prepared a membership book listing all church members from April 22, 1956, when the by-laws were adopted, together with all persons who thereafter applied and were accepted as members. Determinations were made by the Court upon individual claims to be a member and for reinstatement of members as well as challenges thereon.

On February 22, 1967, notice of election was sent to each member listed in the membership book. The notice

of election stated the amount of delinquent dues, if any, owed by that member. These delinquencies were to be paid on or before March 18, 1967.

The election was held on Sunday, March 26, 1967, at the Sheraton-Cleveland Hotel. An accounting firm counted the ballots and certified the election results to the Court and commissioner on March 27, 1967. A certified copy of the election results is attached hereto and made a part hereof as Exhibit A.

The voted ballots were impounded by the commissioner and given to the Court. Among them were 8 specifically challenged ballots. The Court recorded its ruling on each of these challenged ballots. Those rulings did not affect the election results as certified.

Challenge to the entire election was made by the Simich Faction because Sertan Nikolic #546 in the membership book entered the voting area with a duplicate ballot. This challenge is overruled.

366 ballots were challenged by the Simich Faction with the letters "Ch" written on the face of the ballots by the commissioner. These challenges were made on the issue of "renunciation of the Eastern Orthodox Faith." Conforming to the ruling previously made by this Court, the challenges are overruled and the ballots ordered counted.

Mr. Raymond Stachewicz filed with the Court affidavits of 9 persons who, it is claimed, were unable to vote because of illness. He also submitted 191 affidavits of persons joining St. Sava subsequent to July 6, 1963. These 200 persons state that if they had been permitted to vote, they would have voted for the Simich Faction.

Also filed with the Court was an instrument titled "Document on Voting Intentions of St. Sava New Parishioners." It was filed by plaintiff-appellants and contains the signatures of 344 persons who state that they became members of this church subsequent to July 6, 1963. They further state that had they been permitted to vote in the

election, they would have voted for the entire slate sponsored by plaintiff-appellants.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the following are the duly elected officers of St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, and shall so remain until their successors are duly elected:

| | |
|---|---|
| President | Dobrosav Milisavljevic |
| 1st Vice President | Zivorad Bogojevic |
| 2nd Vice President | Mike Janjatovic |
| Secretary | Aleksander Matic |
| Treasurer | Boris Cholich |
| Financial Secretary | Aleksander Cukic |
| Committeemen | Savko Jovanovic |
| | Arso Mandic |
| | Krstomir Nedeljkovic |
| Vestrymen | Stojan Stojanovic |
| | Gligorije Djuric |
| | Desimir Milojevic |
| | Borivoje Krajinovic |
| Auditing Committee | Vladimir Mitic |
| | Risto Janjic |
| | Radomir Stijovic |
| | Milenko Markovic |
| | Radosav Nedljkovic |

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the restraining order heretofore signed by this Court on December 28, 1966 is herewith dissolved.

THOMAS J. PARRINO
Judge

Dated: March 30, 1967

Received for filing
MAR 30 1967
E. J. Masgay, Clerk
by A. Kivarciany

## JOURNAL ENTRY OF THE COURT OF APPEALS FOR THE EIGHTH JUDICIAL DISTRICT IN CASE NO. 28526

(December 21, 1967)

This case came on to be heard as an appeal on questions of law, upon the record, briefs and argument of counsel.

Upon consideration thereof, the Court finds no error to the prejudice of Appellants, and further finds that there were reasonable grounds for this appeal.

WHEREFORE, the Court affirms the judgment of the Court of Common Pleas dated March 30, 1967 with exceptions to Defendants-Appellants.

It is ordered that a special Mandate issue out of this court directing the Court of Common Pleas to carry this Judgment into execution.

(Signed) Joseph H. Silbert, Presiding Judge

Dated—December 21, 1967

Journal Book 33 Page 244

I, EMIL J. MASGAY, Clerk of our said Court of Appeals, do hereby certify that the foregoing entry is truly taken and correctly copied from the Journal of said Court.

Witness, my hand and the seal of said Court, at Cleveland, this 21st day of December A.D. 1967.

EMIL J. MASGAY, Clerk.

# APPENDIX C: ENTRIES IN RELATED CASES

## SERBIAN EASTERN ORTHODOX CONGREGATION OF ST. GEORGE vs. SERBIAN EASTERN ORTHODOX CONGREGATION OF ST. GEORGE

### OPINION OF THE SUPERIOR COURT OF NEW JERSEY
(October 20, 1967)

HERBERT, J.S.C.

These actions have been consolidated. Taken together, they really represent a single controversy between two groups for control of the Serbian Eastern Orthodox Congregation of St. George, Elizabeth, N. J., its real and personal property, its name and corporate function and the established name of the church newspaper. Dissension within the congregation centers about the status of Dionisije Milivojevich, who until May 10, 1963, was without question the diocesan bishop of the Diocese of the United States and Canada. Through the named plaintiffs in case No. C 2874-64 is the parish corporation, the individuals who are responsible for pressing that case—some of whom are named as defendants in case No. C 3603-64—are adherents of Bishop Dionisije. They take the position that the Diocese of the United States and Canada still exists and that Dionisije is its presiding bishop. For convenience I will refer to them as the Dionisije group. The individual plaintiffs in case No. C 3603-64 accept as valid action which was taken in Belgrade, Yugoslavia on May 10, 1963 which by its terms created three new dioceses to replace the single Diocese of the United States and Canada. Among these three was a Mid-Eastern American Canadian Diocese with Detroit designated as its see. For convenience I will refer to this group of litigants as the Belgrade group.

The Congregation of St. George was incorporated under the laws of New Jersey on June 29, 1963. The original

certificate of incorporation made no mention of affiliations, but by an amendment dated September 20, 1954 it was expressly provided that the congregation "shall become, and shall be a constituent part of the Serbian Eastern Orthodox Diocese in the United States and Canada." St. George's did become a part of the diocese and that relationship was continuing when the action of May 10, 1963 was taken. Formal recognition of the relationship is found in Chapter I, Article 5 of the by-laws of the congregation, reading as follows:

> "The Serbian Eastern Orthodox Congregation of St. George is a constituent part of the Serbian Eastern Orthodox Diocese in the United States and Canada. As such, it is subject to the provisions of the Constitution of the Serbian Orthodox Diocese in the United States and Canada, of the ecclesiastical cannons, and other statutes, regulations and decrees of the diocesan authorities and diocesan bishop. At the same time, this congregation is subject to the Law of the State of New Jersey and of the federal laws of the United States of America."

The Diocese of the Serbian Orthodox Church for the United States and Canada was formed in or about 1927. A written constitution for it was approved by the Holy Bishop's Synod of the Serbian Orthodox Church in December, 1928 in accordance with authorization of the Holy Bishop's Assembly of the Serbian Orthodox Church. The First Part of the diocesan constitution contains the following articles which bear upon relationship between the diocese and the Serbian Orthodox Patriarchate:

> "Art. 1.
>
> "The Serbian Orthodox Diocese in the Northern States of America and Canada is considered ecclesiastically-judically as an organic part of the Serbian Patriarchate in the Kingdom of Yugoslavia and enjoys all the benefits which originate therefrom.

"Art. 2

"All statutes and rules which regulate the ecclesiastical-canonical authority and position of the Serbian Orthodox Church in the Kingdom of Yugoslavia are also compulsory for the Serbian Orthodox Diocese in the United States of North America and Canada, with the exception of specific cases which must be formulated with regard to local circumstances in accordance with the ecclesiastical and judicial principles.

"Art. 3

"The jurisdiction of the Serbian Orthodox Diocese in the United States of America and Canada with its Diocesan See in Chicago, includes the entire political territory of the United States of America and Canada, which as such by its geographical location enjoys full administrative freedom and accordingly, it can independently regulate and rule the activities of its church, school and other diocesan institutions and all funds and beneficiaries, through its organs, but in accordance with the laws of this constitution and in agreement with the laws of the United States of America and Canada."

* * *

"Art. 9

"The Bishop of the Serbian Orthodox Diocese in the United States of America and Canada is appointed by the Holy Assembly of Bishops of the Serbian Patriarchate."

* * *

"Art. 12

"The Diocesan Bishop in the United States of America and Canada is obliged to recognize as the head of the Serbian Patriarchate, the Archbishop of Ipek, Metropolitan of Belgrade-Karlovac and Serbian Patriarch, whom he mentions in all services. He shall not make

any changes or innovations in the established order and work of the church without prior agreement with him.

"Accordingly, the Diocesan Bishop shall submit to the Serbian Patriarch for review, all regulations which may be issued by any diocesan authority, which shall if they touch upon the sphere of internal church administration, be subject to the approval of the Holy Pontifical Synod, as the highest executive church authority.

"Should the Diocesan Bishop find by his own assurance, that decisions rendered by any church authority or organ are contrary to the teachings of the Holy Church, her regulations and canons, or to the vital interest of the church, he shall halt the execution of such decision and submit the matter for rediscussion and redecision. If he again is not in accord with redecision as reconsidered he shall submit the case for final decision to a higher authority and if necessary, to the Holy Pontifical Synod."

The position of a congregation, such as that of St. George, in the diocese is dealt with by Article 4 of the First Part of the constitution, which reads as follows:

"The Serbian Orthodox Diocese in the United States of America and Canada is comprised of Serbian Orthodox Church-school Congregations-Parishes, churches, monasteries, archpresbyterates, established within the territory of the above mentioned states and which fall under the spiritual, executive, ecclesiastical-judicial and controlling authority of the diocesan organs (Bishop and Diocesan Council). Therefore, every Serbian Orthodox Church-school Congregation, church, monastery, and archpresbyterate already existing or which shall be established in the above mentioned territories must be in ecclesiastical-canonical bond with this Diocese and recognize its authority and power."

The Serbian Orthodox Church also has a written constitution—a very long one—which was adopted by the Holy Assembly of Bishops meeting in Belgrade in May of 1947. Articles 12 and 13 of that constitution read as follows:

"ARTICLE 12.

"The Serbian Orthodox Church is episcopal. Its main administrative division is composed of dioceses, both in regard to church hierarchical and church administrative aspects.

"ARTICLE 13.

"At the head of the Serbian Orthodox Church is the Serbian Patriarch, as its chief ruler. The title of the Patriarch is: The Archbishop of Peć, Metropolitan of Belgrad-Karlovci of the Serbian Patriarch.

"At the head of each diocese there is the diocesan bishop as its direct ruler. He is, according to the church canonical regulations, chief representative and guiding leader of all church spiritual life and church order in the diocese and he rules the diocese assisted by his clergy and laymen."

Article 14 lists twenty-four dioceses which are geographically located in Yugoslavia or in the general vicinity of that country. Prior to May 1963 the provision for a diocese in the western hemisphere was found in the following portion of Article 15:

"In addition to already mentioned dioceses in the previous article, under the jurisdiction of the Serbian Orthodox Church in spiritual and hierarchical aspect, also belong the following dioceses outside of the country:

"1. The Serbian Orthodox Church in the United States of America and Canada, with its seat in Chicago or in the monastery of St. Sava, at Libertyville, Illinois; . . ."

As to changes in any diocese, Article 16 is pertinent and reads:

> "Decisions of establishing, naming, liquidating, reorganizing, and the seat of the dioceses, and establishing or eliminating of position of vicar bishops, is decided upon by the Holy Council of Bishops, in agreement with the Patriarchal Council."

I come now to the change or, as the Dionisije faction would say, purported change in the American Canadian Diocese. A communication of the Serbian Patriarch dated May 17, 1963 was sent to the United States. The text of this was, in part, as follows:

> "The Holy Council of Bishops of the Serbian Orthodox Church, in its session of May 10th, 1963, under No. 20 and 21 / Min. 77 passed the following decision:
>
> "'Upon the request of the Church-Peoples Council of the American Canadian Diocese and American-Canadian Bishop No. 115 of Feb. 13, 1962 and No. 127 of May 25, 1962, that, in the view of largeness and spaciousness of this Diocese, is necessary to elect for this Church territory more bishops, the Holy Council of Bishops, according to Sec. 16 of the Constitution of the Serbian Orthodox Church, instead of the present American Canadian Diocese has formed three Dioceses:
>
> "'1. The Mid-Western American Diocese, with St. Sava Monastery at Libertyville as its center, and His Grace Bishop Dioniisije as its Bishop,
>
> "'2. The Western American Diocese, Los Angeles as its see and
>
> "'3. Mid-Eastern American Canadian Diocese, with the see in Detroit."

° ° °

"As soon as the newly formed Dioceses obtain their Bishops, the necessary Diocesan bodies and organs will be formed immediately.

"The final delimitation of the newly organized Dioceses, the adjustment of the existing Church By-Laws (Ustav) to the newly created situation and all other questions pertaining to the church organization of those Dioceses, will be studied by the juridical Bishops and Church-Peoples' Council and by the Holy Assembly of Bishops will pass the final judgment on these proposals."

Parenthetically it should be said that the constitution of the Serbian Orthodox Church as well as other papers which are in evidence, all of which are in translation, sometime refer to the "Holy Assembly" of Bishops and sometimes to the "Holy Council" of Bishops; I am satisfied that the terms "Assembly" and "Council" have been used interchangeably to designate one and the same body.

Bishop Dionisije lost no time in communicating to St. George's and presumably to other parishes, his opposition to subdividing the diocese of the United States and Canada. This is reflected in a letter sent to Bishop Dionisije by a group of members of the Congregation of St. George. The letter is dated June 9, 1963 and in the translation furnished to me reads:

"His Grace
American-Canadian Bishop Dionisije and
Diocesan Council of the Serbian Orthodox Church
for America and Canada
Libertyville, Illinois

"Most Reverend Bishop,

Dear and respected brethren,

"After having listened to both epistles of His Grace Bishop read from the Altar Doors of our church by our priest Father Ilija Dajkovich, and realizing the danger in which the unity and survival of our free

Church Diocese in America and Canada are brought, we, as Christians and Serbs, are deeply concerned.

"As a result of our concern for our Church and Diocese, we have decided to give the full support to our free Diocese, and to help to revoke the decision of the Holy Synod about the dismemberment of our Diocese. We consider that the Holy Assembly of Bishops in our enslaved old country have not the free hands in their decisions; therefore, we are convinced that they are forced to work under the pressure of the Communist Government and Party; we also consider that this dismemberment of our Diocese is only profitable to the Communists in Yugoslavia, who desire, in this way, to control the only free Serbian Church in the world.

"We are determinately against such a decision made without any consultation with the Serbian people in America and Canada, and we ask that that decision should be revoked and not put in power.

"Devoted to our holy Church and to the sublime Serbian ideals: . . ."

[Here follow more than seventy signatures.]

Some members of the congregation were not willing to adopt the position stated in this letter. A complete break between the two groups was, however, some time in coming. Then in August, 1964 Bishop Stefan, who had been named diocesan bishop for the Mid-Eastern American Canadian Diocese, came to Elizabeth. He met with fifteen or sixteen members of the congregation who had not previously cemented their allegiance to Bishop Dionisije and they were either persuaded that the new diocese had been legally created and Dionisije was no longer entitled to recognition, or their beliefs to that effect were confirmed. Promptly thereafter the members of St. George who had met with Bishop Stefan received a letter, written in the name of the congregation, informing them that they were

expelled from membership by reason of the meeting and notifying them that they had no right to attend business meetings of the congregation or to attend its social functions. Since then the Belgrade group and its adherents have been carrying on an existence independent of the Dionisije group. The Belgrade group has not formed its own religious corporation under New Jersey law, but it has been recognized by the diocesan bishop as a member congregation of the Mid-Eastern American Canadian Diocese, it holds religious services in church buildings owned by other denominations and it has carried on the ordinary functions of an Eastern Serbian Orthodox congregation. In all these activities it has used the name St. George.

It was not until February 21, 1965 that the Dionisije group, purporting to act as the incorporated congregation of St. George, voted to amend Articles 9 and 10 of the congregation's by-laws to include the following:

"Article 9

". . . persons not recognizing the jurisdiction of the Serbian Orthodox Diocese for the United States and Canada, having its seat in Libertyville, Illinois, cannot be members of the Congregation of Saint George in Elizabeth."

"Article 10

"A member who does not pay his membership dues for two years loses all the rights belonging to members. If he wishes to become again a member, he must file with the Executive Committee a new application to be admitted to membership. The Executive Committee can, at its discretion, admit such an applicant to membership, provided that the latter satisfies the other requirements set forth in Article 9. In such a case the applicant must pay all the membership dues he failed to pay."

The minutes of the meeting at which these amendments were voted upon do not show how many persons were

present and voting. However, the Dionisije group claimed to have on September 15, 1967, 156 members in good standing. At the time of trial the Belgrade group claimed 78 members, but concededly not all of these were paid up as to dues. In spite of disputes concerning the accuracy of the respective totals, I am satisfied that the Dionisije group has a clear majority. The effect of majority power is reflected in the actions taken to expel the Belgrade group. It is also reflected in the continued control by the Dionisije group of the church edifice located at 651-58 South Broad Street, Elizabeth, the personal property contained in the church, the bank account or accounts of the church corporation, as well as possession and control of a partially completed recreation hall on land which I believe is adjacent to the church building.

The complaint of the Dionisije group is docket No. C 2874-64 demands an injunction restraining the Belgrade group from using the name "Serbian Eastern Orthodox Congregation of St. George, Elizabeth, N. J." and from publishing a newspaper under the name and in the form used by the congregation before the schism occurred. It may also be some indication of the strength of feeling which has been aroused by this unfortunate controversy that the Dionisije group also demand punitive damages of $25,000 from each of the individual defendants in case No. C 2874-64 and punitive damages of $100,000 from the defendants as an association. I think these demands for punitive damages are an absurdity and I will give them no further attention. I would make the same comment about them if they had been asserted by the Belgrade group against the Dionisije group. That the members of both groups consider themselves sincerely devoted to the religious beliefs and teachings of the Serbian Orthodox Church I have no doubt, even though the controversy between them has already had a destructive effect upon what was formerly the congregation of all of them and obviously—no matter what the outcome here—will continue to have a destructive effect in the future.

The Belgrade group also sue in the name of the incorporated congregation of St. George as well as in the names of sixteen individual plaintiffs. Their complaint closes with a long series of demands. These aim at voiding the expulsion from St. George of the individual plaintiffs and their adherents and restoration of St. George to the position of a congregation within the Serbian Orthodox Patriarchate and its Mid-Eastern American Canadian Diocese. They do not question the rights of members of the Dionisije faction to leave the congregation and form a new church but they demand relief which will require those who have left to surrender control of the church corporation and give up use of its name and all of its property. There are also demands for an accounting and damages.

The course of events at Elizabeth which split the Congregation of St. George has been already described. Significant developments took place at higher levels, too. On May 10, 1963 the Holy Assembly of Bishops ordered the Holy Synod to proceed with charges against Bishop Dionisije. These charges had been some time in reaching the point of prosecution, had nothing to do with the subsequent refusal to accept the subdivision of the single American-Canadian diocese and had originated in the diocese rather than in Yugoslavia. At the same time Bishop Dionisije was suspended from his episcopal duties pending a disposition of the charges. Thereafter the investigation and prosecution of charges proceeded, with the final result that Dionisije was stripped of all clerical rank and returned to lay status. In spite of the pending charges and the suspension from episcopal duties, Dionisije continued to act as though still diocesan bishop of the American-Canadian diocese. He presided over what purported to be meetings of the Diocesan Assembly, a body consisting (according to the constitution of the American-Canadian diocese) of lay delegates from the congregations and clergy. At one session this body adopted a resolution declaring unlawful the subdivision of the diocese into three parts. When the

Holy Bishop's Synod of the Serbian Orthodox Church responded by denouncing as illegal the assembly over which Dionisije had presided, another assembly was held declaring the American-Canadian diocese autonomous and free of control of the Patriarchate.

These events suggest conflicts on a wide scale, and in fact there have been such conflicts.

This litigation is only a piece of a pattern which has developed since the Holy Assembly of Bishops took action to subdivide the Diocese of the United States and Canada. Conflicts within particular congregations, like the one prevailing within the Congregation of St. George, have ended in the courts of Ohio, Indiana and Ontario. The courts of Illinois are still concerned with litigation over the effect, if any, of the subdivision upon an Illinois religious corporation named "Serbian Eastern Orthodox Diocese of the United States of America and Canada." There has been made available to me opinions in these several cases. A brief examination of each seems appropriate.

*Mirkovich, et al.* v. *Bozanich, et al.*, was decided in the Supreme Court of Ontario on April 12, 1965 by Mr. Justice Wilson sitting without a jury. The plaintiffs had taken the position that the action at Belgrade on May 10, 1963 was valid and should be accepted by the congregation. The defendants were followers of Bishop Dionisije. Both groups claimed the right to ownership and control of the property of the congregation. Pending the suit an arrangement was made whereby the two groups at separate hours could use the church building for religious services. After reviewing the constitution of the Serbian Orthodox Church and the constitution of the single diocese of the United States and Canada the court found in favor of the Belgrade group, relying largely, for applicable law, on the leading case in the country, namely *Watson v. Jones*, 13 Wall. 379, 20 L. Ed. 666 (1871).

*Ralich, et al.* v. *Vukelich, et al.*, was decided on June 29, 1966 by the Court of Appeals for the Ninth Judicial District of Ohio. The plaintiffs who were a minority group

within the Serbian Orthodox Congregation located at Lorain, Ohio, saw fit after the subdivision ordinance of May 10, 1963 to continue as followers of Bishop Dionisije. They complained to the court that they had been unlawfully expelled from membership in the congregation and sought injunctive relief. However, such relief was denied on the ground, among others, that the plaintiffs by refusing to adhere to the new diocese and its bishop had withdrawn from the congregation.

*Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio* v. *Keleman, et al.*, was decided by the Court of Common Pleas of Summit County, Ohio in 1966. That was a suit by the Dionisije faction of the congregation to prevent the Belgrade faction from using the congregation's name. The claim by the Belgrade faction was that it had the right to use the congregation's property as well as its name. The court held in favor of the defendant Belgrade faction. The decision is particularly pertinent here because the Dionisije faction was in control of the congregation's name and property, a position substantially identical to that in which the Dionisije faction at St. George in Elizabeth has placed itself. The relief granted to the Belgrade faction was a declaration that its members constituted the true Serbian Orthodox Church of St. Demetrius of Akron, Ohio and were entitled to the possession and use of all the church property which had been unlawfully withheld from them by the Dionisije group.

*St. Sava Serbian Orthodox Church* v. *Milan Naperta, et al.*, decided by the Court of Common Pleas of Cuyahoga County, Ohio in the spring of 1965, is another case which went against the Dionisije position. The division within the Congregation of St. Sava of Cleveland, Ohio had been so bitter that the large, new and costly church edifice had to be closed in order to preserve the public peace. After a trail lasting five weeks Judge White filed a long opinion in which he said:

> "The primary question to be determined here is whether the Diocese of the U. S. and Canada was

abolished and its territory divided by lawful authority. Article 16 of the Serbian Orthodox Constitution provides as follows:

> "'The decisions concerning the creation, name, abolition, districting and the sees of the Diocese, and concerning the creation and abolition of the positions of the Suffragan Bishops are rendered by the Holy Assembly of Bishops in accord with the Patriarchal Council.'

"The authority thereby reserved to the partriarchate seems to be clear and unambiguous. But it is urged by the defendants that Article 16 must be read and understood in connection with Articles 14 and 15 and with a certain historical fact about the diocese in America. Article 14 names twenty-four dioceses and designates their sees. Article 15 provides:

> "'Besides the dioceses enumerated in the previous articles, in the matters spiritual and hierarchical, to the Serbian Orthodox Church also belong these dioceses which are abroad:
>
> "'1. The Serbian Orthodox Church in the United States of America and Canada, with its see in Chicago or in the Monastery of St. Sava, in Libertyville, Illinois;
>
> "'2. Serbian Orthodox Diocese of Budim;
>
> "'3. Parts of Vrshatz and Temisvar Diocese outside the borders of Yugoslavia, with its see in Temisvar;
>
> "'4. The Czech-Moravian Diocese in Czecho-Slovakia;
>
> "'5. The Serbian Orthodox Vicariate of Skadar with its see in Skadar (Skutari);
>
> "'6. The Serbian Orthodox Churches, Church-Congregations and parishes outside the bor-

ders of Yugoslavia (Churches in the Diaspora). * * *"

"Obviously, Articles 14 and 15 represent an exercise of the authority afforded by Article 16 to create and name prescribe the sees of the 30-odd different dioceses of the Serbian Orthodox Church. The only distinction observed is that between dioceses in the Motherland and dioceses abroad. Such a distinction in no way compromises the authority so exercised. The historical fact alluded to is that only the Diocese of the U. S. and Canada has its own Constitution—all the other dioceses being governed by the Serbian Orthodox Constitution. Overlooked is the added fact that the diocesan constitution and all amendments thereto (prior to November 1963) were submitted to the Holy Assembly of Bishops for approval. This uniform practice speaks loudly to the effect that until the schism which occurred in 1963 Article 16 was taken by the Bishop and the people of American diocese to be operative as to them and to mean what it so clearly states. Further support for this view is to be found in the fact that on one occasion Bishop Dionisy proposed to the Holy Council of Bishops that the American diocese be expanded to include South America and Africa with himself as its head with the rank of Metropolitan. He also pointed out that his existing diocese was territorially so vast and was growing so fast in numbers that he was experiencing difficulty in making needed visitations and administering it and suggested that he needed two or more assistant Bishops.

"The court holds, therefore, that the Holy Assembly of Bishops acted within the limits of its constitutional authority in abolishing the Diocese of the U. S. and Canada and in creating and naming in its stead three new dioceses logically based upon geography. It follows that the Holy Assembly properly

exercised its constitutional authority in naming the Bishops (including Dionisy) to head each of the three new dioceses and fixing their sees. The former diocese was without any authority to have accomplished the same result on its own motion if it had so desired. The idea of separation from the Mother Church which Bishop Dionisy came to embrace so fondly after the division of the diocese and his own suspension was the rankest sort of heresy to him a year or two before when it was proposed by one Bishop Nicolai. Such a radical departure strongly suggests a drowning person struggling for survival. Under such circumstances belated self-claimed independence and autonomy became but tools of convenience."

* * *

"The schism which has been created among the members of St. Sava and numerous other Serbian Churches in this country is attempted to be justified on the ground that the Communists dominate and control the Mother Church in Serbia. Such a claim finds no credible support in the record of this case. One is led to wonder why the dissidents, if they were desirous of forming a National Serbian Church in the U. S. did not do so and forthrightly instead of trying their aspirations in that direction to a diocese no longer in existence and to a deposed Bishop desperately trying to preserve it."

The opinion of Judge White was affirmed by the Court of Appeals for Cuyahoga County on April 7, 1966. In his opinion for the three-judge court, Judge Duffey said:

"St. Sava Serbian Orthodox Church is an Ohio corporation not for profit. The petition is in the name of the church. It alleges, in essence, that defendants appellants illegally claim to hold corporate offices and are illegally acting in various ways to interfere with the conduct of church affairs. A general denial and so-called 'cross-petition' were filed. The cross-petition names as defendants certain individuals, alleges that

defendants-appellants are the true, lawful officers of St. Sava Church, and that the new defendants are the ones who illegally claim and are attempting to exercise corporate authority in the church.

"At the outset, we again remind all parties that a man's beliefs, and his acceptance or rejection of ecclesiastical authority, cannot be decided for him. By coming into a civil court, only the control of buildings and material things can be effected. Such control can be used as a weapon to deepen the wounds of controversy, but of itself cannot help solve religious differences. Everyone should clearly understand that no court of civil law can restore unity to the congregation of St. Sava Church."

I have also mentioned above litigation over church affairs in Indiana. This is indicated by a letter opinion furnished to me which is dated June 6, 1967 and which was filed by Judge Simpson of the Elkhart Circuit Court. However, Judge Simpson said almost nothing about the facts of the case before him and I find his opinion of no help here; it is interesting only to show another example of the widespread controversy within the church.

In Illinois litigation has taken a different form. There the litigants have been seeking to get control of the properties of the incorporated American-Canadian diocese, which was formed under the laws of Illinois as a religious society in 1936, its name being "Serbian Eastern Orthodox Diocese for United States of America and Canada." The trial court granted summary judgment and on appeal this was reversed. *Serbian Eastern Orthodox Diocese for United States and Canada, et al.* v. *Ocokoljich, et al.*, 72 Ill. App. 2d 444; 219 N. E. 2d 343 (1966). The essential holding of the appellate court seems to be that the case called for trial rather than disposition on motion. The opinion, however, contains interesting material on the long history of the Serbian Orthodox Church, much if not all of which will be found in the record before me. It also contains a statement that the court was obliged to accept the ecclesiastical deter-

mination that Dionisije had ceased to be the bishop of the American Canadian diocese. That statement is followed (page 350 of 249 N. E. 2d) by a declaration that the diocese was not subject to the provisions of article 16 of the constitution of the patriarchate (quoted above) giving power to the Holy Assembly of Bishops to create, abolish and fix districts for dioceses. I cannot accept the construction and effect given to article 16 by the Illinois Court. The American Canadian diocese was merely one diocese of the Serbian Orthodox Patriarchate. It was no more above the powers given to the Holy Assembly by article 16 of the constitution of the patriarchate than was any other diocese. It may also be said about the Illinois decision that the problem dealt with was the possible transfer of property ownership from an incorporated diocese to another owner, while in the case before me the only question is proper control of the property-owning corporation without any question of transfer of ownership being involved.

My conclusion is that the American Canadian Diocese was abolished by action of the Holy Assembly of Bishops taken on May 10, 1963; that the creation of a new Mid-Eastern American Canadian Diocese, as well as two others, was effective and that the Congregation of St. George became a part of this new diocese. I can adopt the following language of Judge Matz in *Serbian Orthodox Church Congregation of St. Demetrius v. Kelemen, et al., supra*, as a summary expression of my views.

> "If the Holy Bishops Assembly had the right under Article 16 to divide the original diocese, then it could hardly be said that its action would, in effect, be an amendment of the Diocesan Constitution since the two constitutions must be read together in determining that question.
>
> "However, it is not necessary for the Court to decide the validity of the division of the diocese and the establishment of three new dioceses. The Mother Church has decided and declared, in effect, that the old diocese does not exist. The diocese, under the

leadership of former Biship Dionisije, has declared that it is no longer part of the Serbian Patriarchy.

"This church was organized, as the evidence discloses, as a church of the Serbian Patriarchy."

* * *

"That the Serbian Eastern Orthodox Church is a hierarchy is conceded by both parties to this lawsuit and, in fact, the Constitution of the dioceses and the Patriarchy spell it out in detail. The Constitution of the Patriarchy, Article 5, recites the order of the various organizations of the church and lists them, including the local church congregation. The diocese itself, as shown by its Constitution, is subservient to the Patriarchy."

* * *

"Plaintiffs and those in sympathy with them are rebelling against the patriarchy and are following the former bishop who is not a bishop and are considering themselves a part of a church which is not a part of the Orthodox church system and not a part of the Eastern Orthodox Church. Consequently, the evidence in this case identifies the defendants and those in association with them as the successors to the church and who maintain and profess its submission to the Serbian Eastern Orthodox Church."

In this case, as in some of the other litigation I have referred to, an effort has been made to justify the pro-Dionisije position by contending that the Serbian Patriarchate was influenced by pressure from a Communist government. There was a little evidence presented to me indicating that the governmental authorities of Yugoslavia have in some instances discouraged or forbidden religious practices. The proof thus offered does not show in the slightest that the creation of the three new dioceses and the stripping of all clerical rank from Dionisije was dictated or influenced by the political power of party or government.

As to the principles of law which apply here, I have already cited *Watson* v. *Jones*, in which the United States Supreme Court long ago dealt with the effect upon local church property of a division within a congregation. The law of New Jersey follows *Watson*. Recently the Appellate Division in *St. John's Greek Catholic Hungarian Russian Orthodox Church of Rahway* v. *Fedak, et al.* (decided September 12, 1967 and not yet reported) said:

> "The limited role available to the courts in church disputes has been reiterated time and again. In general, decisions of the highest authorities of the church organization on questions of discipline, faith and ecclesiastical rules, custom and bylaws are binding on the courts. *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 20 L. Ed. 666 (1872). In the case of property belonging to a particular ecclesiastical organization which is part of a larger general church organization, a majority cannot secede from that organization and transfer the property of the church to another use. *American Primitive Society* v. *Pilling*, *supra*, 24 N. J. L. at pp. 657-58; *True Reformed Dutch Church* v. *Iserman*, 64 N. J. L. 506 (Sup. Ct. 1900); *Presbytery of Jersey City* v. *First Presbyterian Church*, 80 N. J. L. 572 (Sup. Ct. 1910); *Karoly* v. *Hungarian Reformed Church*, 83 N. J. Eq. 514 (Ch. 1914), affirmed 84 N. J. Eq. 203 (E. & A. 1915); *Kelly* v. *McIntire*, 123 N. J. Eq. 351 (Ch. 1938). In the latter case the court held that:
>
> > "The principle seems to be firmly established that a congregation belonging to a religious denomination and subject to the constitution, faith and doctrine thereof, cannot use its property for a purpose other than that sanctioned by the denomination." (at p. 361)

The plaintiffs in docket No. C 2874-64 are not entitled to relief. The plaintiffs in docket No. C 3604-64 are entitled to a judgment declaring that the Serbian Eastern

Orthodox Congregation of St. George, Elizabeth, N. J. is a congregation of the Serbian Orthodox Diocese, known as the Mid-Eastern American Canadian Diocese, created by the decision of the Holy Assembly of Bishops dated May 10, 1963; also declaring void the purported amendments to the congregation's by-laws adopted February 21, 1965 with the objective of excluding from membership all who might be unwilling to support the continued existence of the single American-Canadian Diocese. The judgment shall further provide that all offices of the incorporated congregation be vacated by individual defendants named in docket No. C 3603-64 and shall be turned over at once to nominees of the plaintiffs in that action together with all books, records and other incidents of the respective offices to the end that the corporation may be placed fully under the control of members of the Serbian Orthodox Church who recognize and adhere to the Mid-Eastern American Canadian Diocese and its bishop as well as to the Serbian Orthodox Patriarchate.

Control of the corporate congregation should bring with it control and use of all church property but jurisdiction will be retained so that any problems can be brought before the court which may arise or be disclosed in connection with restoring the use of the material assets of the congregation to the persons and purposes for which those assets have been dedicated. Though the defendants in docket No. C 3603-64 have the right to form any church or affiliate with any church they choose—in short, they are guaranteed freedom of religion by the constitutions of the United States and of the State of New Jersey—they cannot hold themselves out as something they are not; and so they and all persons who are or may become affiliated with them in the schismatic congregation which is the product of the break with the Serbian Orthodox Patriarchate and its Mid-Eastern American Canadian Diocese should be enjoined from using the name St. George and from using the name of the established newsletter of St. George or any similar publication.

Nothing found in this opinion should be read by the successful litigants as a justification for excluding anyone from the Congregation of St. George, who if he qualifies from a religious point of view, is willing to accept the new diocese, its bishop and its position as a part of the Serbian Orthodox Patriarchate.

## JUDGMENT ENTRY OF THE SUPERIOR COURT OF NEW JERSEY
(October 25, 1967)

This matter having been brought on by Notice of Motion to settle the form of Judgment before Judge Ward Herbert by Paul R. Williams, Jr., attorney for the plaintiffs in the case having Docket Number C 3603-64 and attorney for the defendants in the case having Docket Number C 2874-64 and in the presence of Daniel J. Russell, attorney for plaintiffs in the case having Docket Number C 2874-64 and attorney for the defendants in the case having Docket Number C 2603-64 and the Court having listened to the arguments of counsel and with reference to the form of this Judgment and the Court having determined that the form of said Judgment should be as follows:

It is on this 20th day of November, 1967, Ordered and Adjudged that the Serbian Eastern Orthodox Congregation of St. George, Elizabeth, New Jersey, a religious corporation of the State of New Jersey is an integral part of the Mid-Eastern American Canadian Diocese of the Serbian Orthodox Patriarchate, created by the decision by the Holy Assembly of Bishops of the Serbian Orthodox Patriarchate in Yugoslavia on May 10, 1963; and

It is further Ordered and Adjudged, that the aforementioned incorporated congregation of the Serbian Eastern Orthodox Congregation of St. George of Elizabeth, New Jersey is not associated, affiliated or connected with the Diocese headed by Bishop Dionisije, commonly referred to as the Serbian Eastern Orthodox Diocese for the United States and Canada; and

It is further Ordered that the amendments to Article 9

and 10 of the by-laws of the aforementioned congregation adopted February 25, 1965 in which membership in said congregation is contingent upon supporting the aforementioned Diocese headed by Bishop Dionisiji is void and of no force and effect; and

It is further Ordered that all offices held by the defendants in the case having docket number C 3603-64 are declared vacant; and

It is further Ordered that the plaintiffs in the case having docket number C 3603-64 or their nominees who are recognized by the Mid-Eastern American Canadian Diocese are entitled to act in behalf of the church congregation and for that purpose the defendants in the case having docket number C 3603-64 are ordered to turn over at once to the plaintiffs or their nominees all books, records and other incidents of their respective offices in order that the church congregation may be placed solely under the control of members of the church congregation who recognize and adhere to the Mid-Eastern American Canadian Diocese, its Bishop, and the Serbian Orthodox Patriarchate; and

It is further ordered that the defendants in the case having docket number C 3603-64 and all those person who are or may become affiliated with said defendants are enjoined from using the name "St. George", from holding themselves out as representing the Serbian Eastern Orthodox Congregation of St. George, Elizabeth, New Jersey and from using the name of the news letter commonly known as "The Bell" of the congregation and provided, however, that nothing contained in this Judgment shall be construed to exclude any person from said congregation who is qualified from a religious point of view to become a member and who is willing to accept the jurisdiction of the American Canadian Diocese, its Bishop and the Serbian Orthodox Patriarchate; and

It is further Ordered that the Complaint having docket number of C 2874-64 is hereby dismissed; and

It is further Ordered that the Court will retain jurisdiction in order that any problems can be brought before the Court which may arise or be disclosed in connection with restoring the use of the material assets of the congregation to the persons and purposes for which those assets have been dedicated.

WARD J. HERBERT

## OPINION OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

(June 13, 1969)

*Per Curiam.* This appeal involves a controversy between two groups for control of the Serbian Eastern Orthodox Congregation of "St. George," Elizabeth, N. J.

Prior to May 10, 1963 St. George's was a constituent part of the "Serbian Eastern Orthodox Diocese in the United States and Canada." As originally constituted, that diocese (hereafter the old diocese) comprised the entire territory of the United States and Canada and was one of those making up the Serbian Orthodox Church (the mother church), with headquarters in Belgrade, Yugoslavia. The spiritual head of the mother church was the Serbian Patriarch and the power of appointment of its bishops was vested in its Holy Assembly of Bishops (the Holy Episcopal Council). Prior to May 10, above, Dragoljub Milivojevich, under the name of Bishop Dionisije, was bishop of the old diocese by appointment of the Holy Assembly.

On May 10, 1963 the Holy Assembly, with the approval of the Patriarch, divided the American and Canadian Diocese into three. St. George's was in the new Mid-Eastern American Canadian Diocese. Bishop Dionisije was assigned as bishop of the new Mid-Western Diocese. Bishop Dionisije was assigned as bishop of the new Mid-Western Diocese but was suspended from office pending the hearing and determination of certain charges which had been made against him.

Bishop Dionisije opposed the subdividing of the old diocese and sought to enlist support in resisting it. Certain

members of the congregation of St. George (hereinafter the Dionisije group) responded by advising him in a letter of their desire to "help to revoke the decision of the Holy Synod" and by later participating in a Diocesan Assembly in which the old diocese, in effect, declared its independence of the mother church. Other members of the congregation (hereafter the Belgrade group) were unwilling to adopt a position in opposition to that of the mother church, and when they sought to cooperate with the bishop appointed to preside over the newly created Mid-Eastern Diocese (the new diocese), they were expelled from membership in the congregation and prohibited from attending its meetings or social functions. The bylaws of the congregation were also amended to exclude from future membership those "not recognizing the jurisdiction of the Serbian Orthodox Diocese for the United States of America and Canada having its seat in Libertyville, Illinois," (meaning the old diocese). Since that time St. George's has been in the hands of the Dionisije group while those opposed have been compelled to hold services elsewhere.

The charges against Bishop Dionisije were heard by the Holy Assembly of bishops which found him guilty and entered an order, dated March 15, 1964, removing him as bishop and reducing him to layman status. One of the charges of which he was found guilty was schism. On March 24, 1966 the bishops having jurisdiction over the three newly created American-Canadian dioceses issued a bulletin in the form of a Declaratory Hierarchical Act which, in effect, branded his followers as schismatics who had lost their "status and all rights or privileges in the Serbian Orthodox Church."

The judge of the Chancery Division, following *Watson v. Jones*, 13 *Wall.* 679, 80 U. S. 679, 20 *L. Ed.* 666 (1872), determined that St. George's was an integral part of the Serbian Orthodox Patriarchate and of the new diocese established by the mother church, and that neither Bishop Dionisije nor the old diocese any longer had jurisdiction over it. He declared invalid the exclusion of the Belgrade

group from membership, declared vacant all offices held by members elected by the Dionisije group, and ordered that the books and other records be turned over to those recognizing the Patriarchate and the new diocese. The present appeal by members of the Dionisije group challenges the resultant judgment.

As the law stood at the time the matter was tried, we are satisfied that *Watson v. Jones* applied and that the judgment was fully sustainable, substantially for the reasons set forth in the written opinion of the trial judge. Compare *St. John's Greek Catholic, etc. Church v. Fedak*, 96 *N. J. Super.* 556 (*App. Div.* 1967), certification denied 50 *N. J.* 406 (1967). However, the case was tried, and appellants' original brief was filed, prior to the coming down of the decision of the United States Supreme Court in *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 *U. S.* 440, 89 *S. Ct.* 601, 21 *L. Ed. 2d* 658 (1969), and appellants urge in their reply brief, *inter alia*, that in determining the issues here the trial judge invaded fields of decision which were held in that case to be denied the courts by the First Amendment to the Federal Constitution. We disagree and hold that *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* also calls for affirmance.

[1] Appellants take the stand that they remain members of the Serbian Orthodox Church, although not following it in the matters here involved. That church is an autocephalous hierarchical one which functions under the spiritual guidance of its Patriarch. Its highest body is the Holy Assembly of Bishops, upon whom rests the power to appoint and remove bishops. The Holy Assembly, which had appointed Bishop Dionisije, has removed him as bishop and solemnly declared him to be no longer an Orthodox clergyman. We are assured by appellants that they do not ask us to review that action, and we recognize that we may not do so. *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra;*

*Watson v. Jones, supra; Kreshik v. St. Nicholas Cathedral*, 363 *U. S.* 190, 80 *S. Ct.* 1037, 4 *L. Ed. 2d* 1146 (1960). Thus, with certain exceptions to which reference will be hereafter made, we may not look beyond the ecclesiastical determination that Dionisije is no longer a bishop having jurisdiction over the diocese of which St. George is a part, but is a schismatic, cut off from the body of the church.

[2] As to the status of those, including, allegedly, appellants, who continue to follow Dionisije in spite of his removal and unfrocking, we are confronted with the *Declatory Hierarchical Act of the bishops appointed by the Holy Assembly* to govern the three new Serbian Orthodox Dioceses in the United States and Canada, which *declares that those who follow Bishop Dionisije are schismatics who ipso facto* "have cut themselves off from the Mystical Body of Christ, the Holy Orthodox Church and so have *excommunicated themselves* from the family of Holy Orthodoxy throughout the world." The trial judge implicitly determined, and we find the proofs support that conclusion, that appellants here qualify as followers of Bishop Dionisije *who thus became schismatics.*

[3] Likewise, under *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* we may not on this appeal review the validity of the action of the Holy Assembly of Bishops, acting under the authority of Article 16 of the constitution of the mother church, in subdividing the old diocese, and appellants make it clear in their reply brief that they are not seeking such review. Further, assuming, as the court there pointed out, that a narrow review of a specific ecclesiastical decision would be permissible under *Gonzalez v. Roman Catholic Archbishop*, 280 *U. S.* 1, 50 *S. Ct.* 5, 74 *L. Ed.* 131 (1929), to determine whether fraud, collusion or arbitrariness appeared, the proofs here are entirely deficient in that respect. While there was some suggestion of communist domination of the mother church as having played a part in the division of the old diocese, supporting proof was entirely lacking and the trial judge specifically found to the contrary.

Thus it would appear that the basic conclusions of the trial judge rest, not upon his determination of ecclesiastical questions whose determination by the courts may be inhibited by *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* or *Watson v. Jones, supra*, but upon the *recognition of decisions made by the highest authority of the mother church of which the Church of St. George was a constituent part from the time of its organization.* The resultant judgment leaves intact the congregation's constitution and bylaws as they existed prior to the amendment, excluding those not recognizing the old diocese. Since the constitution of the old diocese has been carried over into the new diocese, the relations between St. George's and the new diocese, and between the latter and the mother church, remain the same.

The judgment of the Chancery Division is accordingly affirmed.

## ORDER OF THE SUPREME COURT OF NEW JERSEY DENYING PETITION FOR CERTIFICATION

(September 30, 1969)

On Petition for Certification

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied, with costs.

Witness the Honorable Joseph Joseph Weintraub, Chief Justice, at Trenton on the 30th day of September, 1969.

John H. Gildea
Clerk of the Supreme Court

## ORDER OF THE SUPREME COURT OF THE UNITED STATES DENYING PETITION FOR WRIT OF CERTIORARI

(March 2, 1970).

Petition for writ of certiorari to the Superior Court of New Jersey, Appellate Division, denied.

## SERBIAN ORTHODOX CHURCH CONGREGATION OF ST. DEMETRIUS OF AKRON, OHIO, v. KELEMEN et al.

## OPINION OF THE SUPREME COURT OF OHIO

(March 4, 1970)

*Per Curiam.* This case is before the court upon remand by the Supreme Court of the United States for further consideration in light of that court's decision in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969) 393 U. S. 440, 89 S.Ct. 601.

Before a controversy arose in 1963, both plaintiff and defendants were a part of the church membership of the Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio. The plaintiff is now an unincorporated association in possession and control of the church property and uses the church name. Defendants are out of possession of the church property and claim to be parishioners of the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, describing themselves as St. Demetrius Church Parishioners for the Unity of the Serbian Orthodox Church, Akron, Ohio, and the "Committee for St. Demetrius Church Parishioners for the Unity of the Serbian Orthodox Church, Akron, Ohio."

In the instant case, plaintiff seeks to enjoin defend-[153] ants from using the name "St. Demetrius," or "St. Demetrius Church," or "St. Demetrius Church Parishioners." Defendants' cross-petition essentially asks the court to hold that plaintiff is unlawfully withholding and usurp-

ing defendants' rights to the use of the church property; that plaintiff be enjoined from the prosecution of this action and from representing itself to be the Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio; that plaintiff also be restrained from exerting any further control over the church's affairs, management, and control of the property and assets of the church; and that all such control be transferred to a temporary "Caretaker Board."

The Court of Common Pleas ruled for defendants on their cross-petition, and ordered plaintiff to relinquish management and control of the church property and to vacate positions of trust in the church organization.

In essence, the Court of Appeals found, as follows:

That in June 1919 the Serbian Orthodox Church of Akron, Ohio, was incorporated, and the congregation was known as the Serbian Orthodox Church School Congregation of St. Demetrius; that the corporation was a part of the American-Canadian Diocese, and thus a part of the Serbian Orthodox Church Mother Church in Yugoslavia; that the Mother Church is hierarchical and episcopal in structure, as distinguished from autonomous and congregational; that the Mother Church has no power unilaterally to change the geographical limits of the American-Canadian Diocese, although bishops may be deposed and changed by the Mother Church without consulting the diocese; and that because of plaintiff's acts of claiming full ecclesiastical autonomy, found plaintiff to be composed of schismatics who have no right to control church property or to participate in the control of church property or services or to worship as a group of St. Demetrius. Plaintiff association was ordered to relinquish control of all church property and corporate holdings.

Our review is for the purpose of examining the above findings and orders in the light of the *Hull Memorial case*, [156] *supra*, which was a dispute between the Presbyterian Church in the United States (General Church) and two local Georgia churches; one of which was the Mary Eliza-

Beth Blue Hull Memorial Presbyterian Church. The Presbyterian Church is hierarchical in organization rather than congregational.[1] The membership of the two local churches, believing that the general church had substantially deviated from church doctrine and practice, withdrew from the general church.

According to Georgia law, when the local church joined the general church, control of the local church property passed to the general church and an implied trust arose under which such control would continue as long as the general church did not abandon or depart from the tenets of faith and practice it held at the time the local church became affiliated. The Georgia court asked the jury to determine whether the general church had abandoned or departed from the conditions of the implied trust. Mr. Justice Brennan, in his opinion, pointed out the error in submitting that question to the jury, stating (89 S.Ct., at 606):

"The Georgia courts have violated the command of the First Amendment. The departure-from-doctrine element of the implied trust theory which they applied requires the civil judiciary to determine whether actions of the general church constitute such a 'substantial departure' from the tenets of faith and practice existing at the time of the local churches' affiliation that the trust in favor of the general church must be declared to have terminated. This determination has two parts. The civil court must first decide whether the challenged actions of the general church depart substantially from prior doctrine. In reaching such a decision, the court must of necessity make its own [157] interpretation of the meaning of church doctrines. If the court should decide that a substantial depar-

[1] A hierarchical church is generally one in which authority is exercised by laymen and ministers organized in an ascending succession of judicatories, while a congregational church is one in which each local church is self-governing. Note, JUDICIAL INTERVENTION IN DISPUTES OVER THE USE OF CHURCH PROPERTY, 75 Harv.L.Rev. 1142, 1143, citing Sperry, Religion in America.

ture has occurred, it must then go on to determine whether the issue on which the general church has departed holds a place of such importance in the traditional theology as to require that the trust be terminated. A civil court can make this determination only after assessing the relative significance to the religion of the tenets from which departure was found. Thus, *the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role.*" (Emphasis added.)

The opinion (89 S.Ct. at 606) clearly restricts the determination of the right to possession and control of church property to the utilization of neutral law principles, by the following language:

"* * * Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. *And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded.*" But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. Because of these hazards, the First Amendment enjoins the employment or organs of government for essentially religious purposes, *School District of Township of Abington, Pa. v. Schempp*, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.(2d) 844 (1963); the Amendment therefore commands civil courts to decide church property disputes [158] without resolving underlying controversies over religious doctrine. Hence states, religious organizations, and

individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." (Emphasis added.)

Before surveying the Court of Appeals' findings and orders in light of the decision in the *Hull Memorial case*, a further reference to the facts of the instant case is helpful. Insofar as our case is concerned, plaintiff and defendants were able to worship at the church property until this controversy exacerbated. The root cause of the strife in this church (as well as other Serbian Orthodox Churches in the United States) is that there were some members who were disturbed by the relationship between the Mother Church, headquartered at Belgrade, Yugoslavia, and the government of that country. This undercurrent of unrest was precipitated into a polarized controversy when the ruling body of the Mother Church ordered that there were to be three dioceses in the United States and Canada instead of the existing one. Bishop Dionisije was the Bishop of the American-Canadian Diocese and he and his followers (plaintiff) deny the power of the Mother Church to do away with that single diocese. Defendants, to the contrary, adhere to the Belgrade decision. Dionisije was investigated, charged, tried, and found guilty of transgressions against the church and was ordered defrocked by the Holy Episcopal Council, the highest ecclesiastical, judicial body of the Serbian Orthodox Church.

Briefly stated, our inquiry is: Did the Court of Appeals base its judgment, awarding possession and control of the property involved, upon consideration of whether the parties had adhered to or departed from church tenets and doctrine or did it base its judgment upon principles of neutral law?

The answer lies in the appraisal of the findings of that court. The Court of Appeals' factual findings regarding the name, incorporation, the hierarchical form of organization, and plaintiff's claim of autonomy from the Mother [159] Church did not require a decision involving church doctrine or tenets.

That court arrived at legal conclusions relative to the organizational relationship, powers and duties of the Mother Church concerning the appointment of a bishop for the Diocese of the United States and Canada, and the Mother Church's attempt to eliminate the diocese. While we recognize that these matters of internal church organization are chronic sources of disagreement for the parties and are frequently mentioned in the pleadings, briefs and arguments, the findings of the Court of Appeals are unnecessary and immaterial to a *neutral* law inquiry utilizing principles of law developed for use in *all* property disputes. Further, the *Hull Memorial case* offers the strong suggestion that civil courts cannot constitutionally determine matters of church government. In that case, the court's opinion cites with approval *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 97 L.Ed. 120, where, at page 116, the court said:

"° ° ° The opinion [*Watson* v. *Jones*, 80 U.S. 679, 20 L.Ed. 666] radiates ° ° ° a spirit of freedom for religious organizations, and independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of *church government* as well as those of faith and doctrine. *Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as part of the free exercise of religion against state interference.*" (Emphasis added.)

In addition, the Court of Appeals found that the members of plaintiff association have performed schismatic acts amounting to a withdrawal from the general church. The essence of this finding must lie in a judicial determination that plaintiff has acted contra to the doctrine and tenets of the church. In order to make such a finding the Court of Appeals had to examine plaintiff's activity as well as church doctrine and tenets. The *Hull Memorial case, supra*, held that a jury could not make such an examination, and [160] the viability of the principle

of the *Hull Memorial case* commands the same judicial abstinence in the instant case.

After our elimination from consideration of those Court of Appeals' findings regarding church organization on the basis that they are immaterial to a neutral law inquiry, and the elimination of the finding of schism because of the principle of the *Hull Memorial case*, what neutral law principles are available as standards in the evaluation of the merits of this dispute? We look to the ordinary indicia of property rights. The Articles of Incorporation of the Servian [Serbian] Orthodox Church of Akron, Ohio, dated June 21, 1919, show that a corporation not for profit was established under the general corporation laws of Ohio. The Articles reveal that the corporation was formed "for the purpose of providing a place of worship ° ° ° according to the rules, regulations and customs of the Servian [Serbian] Orthodox Church ° ° ° for receiving, holding and disbersing [*sic*] gifts, bequests and funds from any source; for owning and maintaining suitable real estate and erecting and maintaining ° ° ° buildings, and ° ° ° a cemetery ° ° °."

Recorded deeds show that the corporation holds legal title to all church property. A review of Ohio law does not reveal recognition of an implied-trust theory of real property when a local church joins a church hierarchy. Even if it were to have existed, civil judicial cognizance of it is deemed unconstitutional if it necessitates a court deciding church doctrine. There are no deeds or other written evidence of conveyance from the local congregation, either to the diocese or the Mother Church. Moreover, the Constitution and By-Laws of the Serbian Orthodox Church School Congregation of Akron provides, in part "The congregation may independently function only in the matters relative to the material holdings (properties) of the congregation." Therefore, in the absence of a conveyance of the property by legal instruments or the existence of an express trust, the title to the property is vested in the corporation.

[161] We note that, in deciding church controversies, civil courts have had occasion to examine decisions made by a church body's tribunal, established to decide disputes. See *Watson* v. *Jones*, *supra* (80 U.S. 679); Note, *Judicial Intervention in Disputes Over the Use of Church Property*, 75 Harv.L.Rev. 1142, 1162. In the *Watson case*, the court said, at page 729:

"* * * It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

Commenting on the *Watson case*, Justice Brennan, in the *Hull Memorial case* (89 S.Ct., 605) said: *"The logic of this language leaves the civil courts no role in determining ecclesiastical questions in the process of resolving property disputes."*

In the case at bar, we are not confronted with the problem of whether we can constintionally order the enforcement of a determination made by an ecclesiastical tribunal. Other than the order creating the three new dioceses, the record fails to indicate an ecclesiastical tribunal's determination concerning the power of the Mother Church to eliminate the American-Canadian Diocese. The record does not illustrate that plaintiff has been ecclesiastically adjudicated to be outside the church doctrine because of the commission of certain acts. Additionally, the determination of the status of Bishop Dionisije, who was ecclesiastically adjudged defrocked, is frequently mentioned but remains unnecessary to our inquiry. Any question concerning court enforcability of such a church determination is not before us.

All the agonies of a church controversy are discernible from a review of this case, but we are convinced by the rule of the *Hull Memorial case* that the civil court's role as a tribunal to bring order to church controversies is narrowly limited.

The control of the name and property, of the Serbian [162] Orthodox Church Congregation of St. Demetrius of Akron, Ohio, must be determined only by reference to the provisions of the Code of Regulations and By-Laws of the corporation not for profit, the corporate laws of this state, and any other secular instruments not requiring the resolution of religious tenets or doctrine.

For the foregoing reasons the judgment of the Court of Appeals is reversed and the cause is remanded to that court for further proceedings in accordance with this opinion.

*Judgment reversed.*

O'NEILL, SCHNEIDER, HERBERT, DUNCAN and CORRIGAN, JJ., concur.

MATTHIAS, J., not participating.

## OPINION OF THE COURT OF APPEALS FOR THE NINTH JUDICIAL DISTRICT

(August 11, 1971)

PER CURIAM:

This case comes before the Court upon remand by the Supreme Court of Ohio, pursuant to a remand to that Court by the Supreme Court of the United States. See: Serbian Orthodox Church v. Kelemen, 21 Ohio State 2d, 154. (We refer the reader of this opinion to the prior unreported opinion of this Court in case No. 5914, decided August 2, 1967, where the history of the prior litigation between the parties is set out).

We are directed in this controversy concerning the property rights of name, land and personalty, to be guided by the following statement from the opinion on remand found in 21 Ohio State 2d 154, at 161 and 162, wherein the Supreme Court of Ohio said:

"The control of the name and property, of the Serbian Orthodox Church Congregation of St. Deme-

tions of Akron, Ohio, must be determined only by reference to the provisions of the Code of Regulations and By Laws of the corporation not for profit, the corporate laws of this state, and any other secular instruments not requiring the resolution of religious tenets or doctrine." (Underscoring ours).

The plaintiffs herein say that they are an unincorporated association, organized for religious worship under the name of Serbian Orthodox Church Congregation of Akron, Ohio. They claim to have been in existence since 1918 under the name of St. Demetrius and that another group is using the same name. They seek an injunction to restrain the other group from using such name.

The defendants herein, in effect, say that: they are the Serbian Orthodox Church of Akron, which, since its organization, has been known as Serbian Orthodox Church School Congregation of St. Demetrius; the plaintiffs have withdrawn from that church, but have remained in possession and control of the lands and buildings by dispossessing the defendants; the plaintiffs, by following a defrocked bishop, are schismatics and not members of the Serbian Eastern Orthodox Church.

The prayer of the defendants is for an order putting the defendants into possession of the church property.

Pursuant to the remand, and the directive above noted from Serbian Orthodox Church v. Kelemen, 21 Ohio State 2d 151, at 161 and 162, we will examine the designated documents for a solution of our problem.

The Supreme Court of Ohio, at page 161 of 21 Ohio State 2d 154, said:

"In the case at bar, we are not confronted with the problem of whether we can constitutionally order the enforcement of a determination made by an ecclesiastical tribunal. Other than the order creating the three new dioceses, the record fails to indicate an ecclesiastical tribunal's determination concerning the power of the Mother Church to eliminate the

American-Canadian Diocese. The record does not illustrate that plaintiff has been ecclesiastically adjudicated to be outside the church doctrine because of the commission of certain acts. Additionally, the determination of the status of Bishop Dionisije, who was ecclesiastically adjudged defrocked, is frequently mentioned but remains unnecessary to our inquiry. Any question concerning court enforcibility of such a church determination is not before us." (Underscoring ours).

There was some additional testimony offered here as well as two exhibits. Objection was made to the introduction of the evidence and the exhibits. This being a law and fact appeal, the evidence as presented is accepted. A motion made prior to the introduction of such evidence that this matter be referred to the trial Court, since such Court was the Court of first instance, is denied.

The church of St. Demetrius has, in large measure, a congregational type organization. Article 15 of the 1960 By-Laws says, in part:

"The supreme authority of the church congregation rests with the membership which exercises its authority through the decisions at the assembly of the membership.

"This body:

"° ° °

"Empowers the board to seek applications for the position of the Priest in the event of a vacancy. Selects from the applicants the candidate desired. ° ° ° Evaluates the work of the Priest in terms of said contract. Possesses sole power to terminate said contract."

Further, such articles says:

"The membership, as a body, is the only legal owner of all properties and decides how these are to be administered."

Article 1 of such By-Laws says, in part:

"The congregation is an integral part of the Serbian Orthodox Diocese of the United States and Canada. In accordance with articles 4 and 68 of the Diocesan Constitution, the Congregation submits itself to the regulations of the Diocese and directives of the Diocesan authorities."

The constitution and by-laws of an earlier period have much the same stipulations.

Articles 4 and 68 above mentioned are found in the Diocesan constitution. Article 4 says that the church-school congregations "must be in ecclesiastical-canonical bond with this Diocese and recognize its authority and power." Article 68 says that "each church-school congregation is considered an integral part of the Serbian Orthodox Diocese in the Northern United States of America and Canada and as such is subject to all the statutes of this Constitution, church canons, and other regulations, rules and orders of the Diocesan authorities headed by the Diocesan Bishop."

St. Demetrius was founded in 1918, and the diocese of which it became a part was founded in 1927. Prior to 1927, it was served by a diocese of the Russian Greek Orthodox Church. St. Demetrius from its founding, and by the earliest constitution and by-laws, required all services and holy days to be conducted in accordance with the law of the Serbian Orthodox Church.

The church was incorporated in 1919, under the name of The Servian Orthodox Church of Akron, Ohio, for "providing a place of worship * * * according to the rules, regulations and customs of the Servian Orthodox Church * * *." The deed transferring the land to the church for a place of worship, and other church purposes, names the grantee as Servian Orthodox Church. No other term or expression is made in the deed as to the use or control of the property.

The constitution of the diocese to which St. Demetrius attached itself, the Diocese of the United States of

America and Canada, provides, in its Article 3, that such Diocese "by its geographical location enjoys full administrative freedom and accordingly, it can regulate and rule the activities of its church * * *." The churches are only in an "ecclesiastical-canonical bond with this diocese and recognize its authority and power." Article 147 of the diocesan constitution says that property acquired by a church-school congregation, such as St. Demetrius, belongs exclusively to such church-school congregation without diocesan rights to it.

It is apparent then that we have one question that is paramount here: Is the plaintiff group St. Demetrius Serbian Orthodox church-school congregation, or is the defendant group that church-school congregation?

To decide that question requires this court to investigate the polity-liturgy-practice and belief of Serbian orthodoxy. This has been declared to be constitutionally impermissible under recent directives of the Supreme Court of the United States. Presbyterian Church v. Hull Church, 393 U.S. 440, 21 L ed 2d 658.

It is admitted here that the plaintiff group follow a defrocked bishop, whose claim to authority over the plaintiff group is one of consent on their part to be so governed. Whether that group is a Serbian Orthodox Church would require us to examine not only the constitution and by-laws of that church, but to determine if it is a church of orthodox or true faith.

It is such determinations that we are prevented from making by the pronouncements of three of the Justices of the Supreme Court of the United States, in languages from the case of Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, 396 U.S. 367, 24 L ed 2d 582, 90 S. Ct. 499 at 24 L ed 2d 584:

> "* * * To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the

> First Amendment in much the same manner as civil determination of religious doctrine. Similarly, where the identity of the governing body or bodies that exercise general authority within a church is a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy. In other words, the use of the Watson approach is consonant with the prohibitions of the First Amendment only if the appropriate church governing body can be determined without the resolution of doctrinal questions and without extensive inquiry into religious polity." (Underscoring ours).

When the Sharpsburg case, supra, is read, along with the case of Presbyterian Church v. Hull Church, supra, we find, according to the pronouncements therein, that the First Amendment to the Constitution of the United States directs civil courts to decide church property controversies without resolving underlying disputes over religious doctrine; and to refrain from an extended search of church practice. Therefore, if a conclusion in favor of hierarchal authority is reached herein, we would be doing that which the First Amendment directs us not to do.

St. Demetrius, in its by-laws of 1918, said that it was a part of the Serbian Patriarchate and the Serbian Diocese in America and that the "congregation may independently function only in matters relative to material holdings (properties) of the congregation." In the by-laws of 1960, St. Demetrius "submits itself to the regulations of the diocese and directives of the diocesan authorities," and it accepts and follows all regulations and laws governing the diocese.

According to the Diocesan Constitution of 1939, the "Serbian Orthodox diocese in the Northern States of America and Canada is considered ecclesiastically-judically [sic] as an organic part of the Serbian Patriarchate in the Kingdom of Yugoslavia * * *."

In the constitution of the Serbian Orthodox Church, the hierarchy is declared to have the exclusive ecclesiastical, spiritual, church-disciplinal as well as church-judicial authority. The decisions concerning the creation, name, abolition and districting of the sees of the dioceses, are matters for the Holy Assembly of Bishops in accord with the Patriarchal Council.

It seems readily apparent that unless persons have an official connection with this church, they cannot call themselves members of a Serbian Orthodox church, regardless of the liturgy used in the service of worship. It is on such subjects that we are prevented from judicially expressing our conclusions.

We find that the church properties herein are subject to the control of the voting members of the church of St. Demetrius, and along with the majority decision of such members as of the year 1962 will pass the right to use the name of St. Demetrius.

The record herein establishes, from an agreed list of 1962 voting members, accepted by both sides in this controversy, that such members chose the present plaintiff group to control the church lands herein and to carry on as the church of St. Demetrius.

For the reasons herein expressed, we grant the prayer of the petition. The cross-petition of the defendants is denied.

A journal entry shall be prepared in accord with this opinion, with the costs herein to be assessed against the defendants.

HUNSICKER, P.J., HOFSTETTER, J., and JONES, J., concur.

(Judge Oscar Hunsicker, Retired Judge of the Ninth Appellate District; Judge Edwin T. Hofstetter and Judge George M. Jones of the Eleventh Appellate District, sitting by assignment of the Chief Justice of the Supreme Court of Ohio in the Ninth Appellate District: Judge Oscar Hunsicker presiding).

## JOURNAL ENTRY OF THE COURT OF APPEALS FOR THE NINTH JUDICIAL DISTRICT

(October 12, 1971)

This cause comes on to be heard on remand by the Supreme Court of Ohio. The matter is presented on questions of law and fact together with the testimony, exhibits, record, proceedings in the trial court, and additional testimony and exhibits admitted in this Court.

The plaintiff is an incorporated association organized under the laws of Ohio. The association conducts religious worship using the name of St. Demetrius Serbian Orthodox Church School Congregation of Akron, Ohio. The plaintiff association occupies the church buildings and lands.

The defendant, also members of the St. Demetrius Congregation, after a vote of the membership granted control of the church offices to those now occupying the church buildings, established church services in another location under the name of St. Demetrius Serbian Orthodox Church School Congregation.

The members of St. Demetrius is, under its bylaws, the supreme authority of the local church. The congregation is the only legal owner of all property. The membership decides how these properties are to be administered.

The church, when organized, provided for a place of worship according to the rules, regulations, and customs of the "Serbian Orthodox Church".

This Court is by law restricted to a determination of the controversy concerning the property rights of the name, land, building, and personalty belonging to St. Demetrius Orthodox School Congregation of Akron, Ohio.

The voting members of the church of St. Demetrius chose the present plaintiff group to control the church name, land, buildings and personalty belonging to St. Demetrius Orthodox School Congregation of Akron, Ohio.

On the issues joined, the prayer of the cross-petition is denied, the prayer of the petition is granted. The defend-

ants and all persons, other than the plaintiff association to whose notice this order shall come, are hereby permanently enjoined from using the name "St. Demetrius", the name of "St. Demetrius Church", or the name "St. Demetrius Church Parishioners" in connection with any concerted activities of any nature whatsoever without the prior approval of the plaintiff.

The supersedeas bond heretofore posted in the common pleas court and thereafter continued by the successive reviewing courts is hereby terminated and plaintiff is released therefrom.

Costs of these entire proceedings are hereby assessed against the defendants.

(sgd.) GEORGE M. JONES
Judge George M. Jones of the Eleventh Appellate District sitting by assignment

(sgd.) EDWIN T. HOLSTETTER
Judge Edwin T. Holstetter of the Eleventh Appellate District sitting by assignment

(sgd.) OSCAR HUNSICKER
Judge Oscar Hunsicker, Presiding Judge sitting by assignment.

## APPENDIX D: CASES INVOLVING THE SAME CONTROVERSY AS THE CASES ON APPEAL

*Ohio:*

*Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio vs. Vladislav Kelemen, et al.* (Summit County) – appeal pending in Supreme Court of Ohio

*Illinois:*

*Serbian Eastern Orthodox Diocese for U.S.A. and Canada, et al vs. Ocokaljich, et al* (Lake County) case tried, parties awaiting decision of trial court

*Indiana:*

*Merich vs. Kragulac* (Stark County) – pending in trial court

*Kragulac vs. Tumbas* (Lake County) – pending in trial court

*Pasalich, et al. vs. Draskovich, et al.* (Elkhart County) – case on appeal to Supreme Court of Indiana

*Pennsylvania:*

*Gsozdich vs. Dudukovich* (Cambria County) – trial partially completed.

## APPENDIX E: PERTINENT PROVISIONS OF INSTRUMENTS OF CHURCH GOVERNMENT

### PERTINENT PROVISIONS OF THE BY-LAWS OF THE ST. SAVA SERBIAN EASTERN ORTHODOX CHURCH OF CLEVELAND, OHIO (1953)

Introduction:

"On the basis of paragraphs numbered 4, 5, 6, 67 and 145 of the Constitution of the Serbian Orthodox Diocese of the United States of America and Canada, these By-Laws are prescribed for the St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, United States of America."

**Part One, Article I, paragraph 4:**

"4. All controversies concerning territorial jurisdiction with any other Church Congregation will be adjudged by the competent Diocesan authority."

**Part One, Article III, paragraphs 1 and 2:**

"ARTICLE III

Relationship to the Diocese

1. The Church Congregation, functioning independently, is regarded an integral and organic part of the Serbian Orthodox Diocese of the United States of America and Canada. She is subject to all the laws prescribed in the Diocesan Constitution, the CHURCH CANONS and the directives and decrees of the Diocesan Authorities FOUNDED upon the Diocesan Constitution and CHURCH CANONS.
2. By no decision of her own can the Church Congregation free herself of dependence upon the Diocese, nor can she secede therefrom except in the event that the Serbian Orthodox Church in Yugoslavia loses her freedom of function because of political circumstances. . ."

Part Two, Article I, paragraph 1:

"Qualifications for Membership

1. All adult Serbians baptised in the Eastern Orthodox Faith, as well as persons of other nationalities who were baptised in the Eastern Orthodox Church, who by their own free will accept all the duties, burdens and obligations as set forth in these By-Laws and in the Diocesan Constitution shall be eligible to become members of the Church Congregation. Adulthood is understood here to begin at the completion of eighteen (18) years of age."

Part Three, Article IV:

"ARTICLE IV

The Priest-Rector and Teachers

1. The Parochial Priest of the Church Congregation shall be a person who is ordained into the priestly orders according to the law and canons of the Serbian Eastern Orthodox Church and who the regular annual general assembly of the Church Congregation or Special assembly called for that purpose, accepts for the priest of the congregation on the basis of a concurrance and confirmation of the Diocesan bishop.

2. The concurrence for the election of a priest for the Church Congregation shall be defined in the following manner:

A) The Church Congregation shall elect a priest from a list of candidates submitted by the Diocesan bishop.

B) If the Church Congregation does not approve of any of the persons on the list of candidates for its priest, it shall so inform the Diocesan bishop.

3. The duties and authority of the priest and the teach-

ers shall be governed by Articles 118 to 145 of the Diocesan Constitution."

Part Five, Article I, paragraph 2:

"2. Complaints against the decisions of the Regular Annual or Special Assembly Meetings shall be made to the higher Diocesan authorities."

Part Five, Article I, paragraphs 6-10:

"6. A complaint against the Priest Rector, concerning Canonical subjects, shall be made to the higher Diocesan authorities and in all other instances, complaint shall be made to the Executive Committee, whose decision shall be final.

7. Any member of the Church Congregation, as well as all parishioners and non-members, shall make complaints if they feel that their rights or interests have been harmed by a decision of any organ of the Congregation.

8. A written complaint shall be given to the President of the Church Congregation who shall send it to the higher authorities for a decision.

9. The Complaintant may request a written confirmation to prove that his complaint was forwarded to the proper authorities.

10. Complaints shall be filed within thirty days of the decision in question counting from the day that the plaintiff learned of the decision and not later than one year from the day the decision was brought forth."

Part Six, Article I, paragraph 12:

"12. Any decision on a change for an amendment to the By-Laws shall become effective when it is confirmed by the authoritative Diocesan Head."

**Part Seven, Article I, paragraph 6:**

"6. In the event of the eventual cessation of the congregation, all of its property, papers, archives, etc. shall fall into the ownership of the Serbian Orthodox Diocese of the United States and Canada."

**Part Eight, Article I, paragraph 4:**

"4. These By-Laws shall go into effect when they are accepted by the Regular Annual or Special Assembly Meeting and after they have been confirmed by the higher Diocesan authorities."

## PERTINENT PROVISIONS OF THE CONSTITUTION OF THE SERBIAN ORTHODOX DIOCESE IN THE UNITED STATES OF NORTH AMERICA AND CANADA (1928 AND 1939)

"Art. 1

The Serbian Orthodox Diocese in the Northern States of America and Canada is considered ecclesiastically-judicially as an organic part of the Serbian Patriarchate in the Kingdom of Yugoslavia and enjoys all the benefits which originate therefrom.

"Art. 2

All statutes and rules which regulate the ecclesiastical-canonical authority and position of the Serbian Orthodox Church in the Kingdom of Yugoslavia are also compulsory for the Serbian Orthodox Diocese in the United States of North America and Canada, with the exception of specific cases which must be formulated with regard to local circumstances in accordance with ecclesiastical and judicial principles.

"Art. 3

The jurisdiction of the Serbian Orthodox Diocese in the United States of America and Canada with its Diocesan

See in Chicago, includes the entire political territory of the United States of America and Canada, which as such by its geographical location enjoys full administrative freedom and accordingly, it can independently regulate and rule the activities of its church, school and other diocesan institutions and all funds and beneficiencies, through its organs, but in accordance with the laws of this Constitution and in agreement with the laws of the United States and Canada.

"Art. 4

The Serbian Orthodox Diocese in the United States of America and Canada is comprised of Serbian Orthodox Church-school Congregations-Parishes, churches, monasteries, archpresbyterates, established within the territory of the above mentioned states and which fall under the spiritual, executive, ecclesiastical-judicial and controlling authority of the diocesan organs (Bishop and Diocesan Council). Therefore, every Serbian Orthodox Church-school Congregation, church, monastery, and archpresbyterate already existing or which shall be established in the above mentioned territories must be in ecclesiastical-canonical bond with the Diocese and recognize its authority and power."

"Art. 5

This Constitution embraces all legislative and administrative organs of the Diocese and by it are regulated the following church authorities and its organs:

A) DIOCESAN CHURCH-NATIONAL ASSEMBLY, whose executive and administrative organ is the Diocesan Council which is composed of two committees:

1) Diocesan Religious-Educational Board, and

2) Diocesan Financial-Executive Board, and

B) DIOCESAN ECCLESIASTICAL COURT.

lower authorities and organs are:

1) District archpresbyterates those organs are archpresbyterate offices and archpresbyters;

2) Serbian Orthodox Church-School Congregations, the organs of which are the church-school general assemblies and executive boards, and

3) Serbian Orthodox Parishes, the organs of which are the parochial chanceries and the parish priests."

"Art. 6

Every organ of the church-school board in the Diocese is subordinated in all executive matters directly to the higher executive organs of the Diocese."

Art. 9

The Bishop of the Serbian Orthodox Diocese in the United States of America and Canada is appointed by the Holy Assembly of Bishops of the Serbian Patriarchate.

Art. 10

The following comes within the jurisdiction of activity of the Diocesan Bishop:

h) to execute all canonical orders of the Holy Assembly of Bishops;

o) to inform the clergy and laity of various canonical directives from the Holy Pontifical Synod;

p) to submit to the Holy Bishops' Assembly of the Serbian Patriarchate an annual report of his archipastoral activities;

Art. 12

The Diocesan Bishop in the United States of America and Canada is obliged to recognize as the head of the Serbian Patriarchate, the Archbishop of Ipek, Metropolitan

of Belgrade-Karlovac and Serbian, Patriarch, whom he mentions in all services. He shall not make any changes or innovations in the established order and work of the Church without prior agreement with him.

Accordingly, the Diocesan Bishop shall submit to the Serbian Patriarch for review, all regulations which may be issued by any diocesan authority, which shall, if they touch upon the sphere of internal church administration, be subject to the approval of the Holy Pontifical Synod, as the highest executive Church authority.

Should the Diocesan Bishop find by his own assurance, that decisions rendered by any Church authority or organ are contrary to the teachings of the Holy Church, her regulations and canons, or to the vital interest of the Church, he shall halt the execution of such decisions and submit the matter for rediscussion and redecision. If he again is not in accord with redecision as reconsidered, he shall submit the case for final decision to a higher authority and if necessary, to the Holy Pontifical Synod.

Art. 23

The Diocesan Assembly, upon being duly constituted, performs the following:

8) decides on changes and amendments to the Constitution with the approval of the Holy Bishop's Assembly of the Serbian Patriarchate.

Art. 56

Court procedures and order of business of the Ecclesiastical Court will be prepared by the Ecclesiastical Court itself with the approval of the Holy Bishop's Assembly of the Serbian Church.

If the Bishop should disagree with the decision of the Diocesan Ecclesiastical Court, as well as with the decision of some Diocesan committee or Diocesan Council, the matter in question will be sent to the Holy Bishop's Synod of the Serbian Church for final decision."

# PERTINENT PROVISIONS OF THE CONSTITUTION OF THE SERBIAN ORTHODOX CHURCH (1947)

"Article 12

The Serbian Orthodox Church is episcopal. Its main administrative division is composed of dioceses, both in regard to church hierarchical and church administrative aspect.

Article 13

At the head of the Serbian Orthodox Church is the Serbian Patriarch, as its chief ruler. The title of the Patriarch is: The Archbishop of Pec, Metropolitan of Belgrad-Karlovci and the Serbian Patriarch.

At the head of each diocese there is the diocesan bishop as its direct ruler. He is, according to the church canonical regulations, chief representative and guiding leader of all church spiritual life and church order in the diocese and he rules the diocese assisted by his clergy and laymen."

Article 14 lists twenty-four dioceses which are geographically located in Yugoslavia or in the general vicinity of that country. The provision for a diocese was found in Article 15, a part of which reads as follows:

Article 15

"In addition to already mentioned dioceses in the previous article, under the jurisdiction of the Serbian Orthodox Church in spiritual and hierarchical aspect also belong the following dioceses outside of the country:

1. The Serbian Orthodox Church in the United States of America and Canada, with its seat in Chicago or in the Monastery of St. Sava, at Libertyville, Illinois;"

## Article 16

"Decisions of establishing, naming, liquidating, reorganizing, and the seat of the dioceses, and establishing or eliminating of position of Vicar bishops, is decided upon by the Holy Council of Bishops, in agreement with the Patriarchal Council."

# In the Supreme Court of the United States

No. 71-1007

October Term, 1971

TOM SIMICH, ET AL,

*Petitioners*

vs.

DOBROSAV MILISAVLJEVIC, ET AL,

*Respondents*

TOM SIMICH, ET AL,

*Petitioners*

vs.

ST. SAVA SERBIAN EASTERN ORTHODOX CHURCH OF CLEVELAND, OHIO,

*Respondent*

TOM SIMICH, ET AL,

*Petitioners*

vs.

ST. SAVA SERBIAN EASTERN ORTHODOX CHURCH OF CLEVELAND, OHIO, ET AL,

*Respondents*

**VOLUME II**

**Petition for Writ of Certiorari**
**To the Supreme Court of the State of Ohio**
**(Appendix F)**

KOTTLER & DANZIG
570 Union Commerce Building
Cleveland, Ohio 44115

Harry Kottler and
Randall D. Luke,
*Of Counsel*
*Attorneys for Petitioners*

STRANGWARD, MARSHMAN, LLOYD & MALAGA
1405 National City Bank Building
Cleveland, Ohio 44114
W. P. Strangward,
*of Counsel*

JAMES EASLY
Terminal Tower
Cleveland, Ohio 44113
*Attorneys for Respondents*

## TABLE OF CONTENTS

APPENDIX F: Instruments of Church Government

Articles of Incorporation of Serbian Orthodox Church, St. Savo 1

By-Laws of The St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio 2

Constitution of The Serbian Orthodox Diocese in the United States of North America and Canada 31

Constitution of The Serbian Orthodox Church 86

# ARTICLES OF INCORPORATION
# OF
# SERBIAN ORTHODOX CHURCH, ST. SAVO

The undersigned, a majority of whom are citizens of the United States, desiring to form a corporation, not for profit, under the General Corporation Act of Ohio, do hereby certify:

FIRST. The name of said corporation shall be SERBIAN ORTHODOX CHURCH, ST. SAVO

SECOND. The place in this State where the principal office of the corporation is to be located is Cleveland, in Cuyahoga County.

THIRD. The purpose or purposes for which said corporation is formed are: not for profit, but to promote the cause of the Christian Religion, to provide a place of worship for its members, to be conducted in accordance with the rules and laws of the Serbian Orthodox Church, to receive, hold and disburse gifts, bequests and other funds for said purposes, to own and maintain suitable real estate and buildings for its purposes and to do all things necessary and incident thereto.

FOURTH. The following persons shall serve said corporation as trustees until the first annual meeting or other meeting called to elect trustees.

15801 Waterloo Road, Cleveland, O. Nickola Dsurdovich
10410 Manor Ave., Cleveland, O. Steve Zivich
1374 East 52nd Street, Cleveland, O. Zika Zivanovich
1567 East 36th Street, Cleveland, O. Bude Borovac

IN WITNESS WHEREOF, We have hereunto subscribed our names, this 17th day of January, 1928.

Ernest Abram
Milos Vujaklijos
George Roksandicz

# BY LAWS
of the
# ST. SAVA SERBIAN EASTERN ORTHODOX CHURCH
of
# CLEVELAND, OHIO
# UNITED STATES OF AMERICA

## Introduction

On the basis of paragraphs numbered 4, 5, 6, 67 and 145 of the Constitution of the Serbian Orthodox Diocese of the United States of America and Canada, these By-Laws are prescribed for the St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, United States of America.

## PART ONE

### The Church Congregation in General

### ARTICLE I

### Name and Territorial Jurisdiction

1. In the city of Cleveland, Ohio there exists the Serbian Eastern Orthodox Church Congregation which will continue to bear the title: "The Saint Sava Serbian Eastern Orthodox Church of Cleveland, Ohio".
2. The territorial jurisdiction of the Congregation includes the territory of the city of Cleveland, and extends throughout Cuyahoga and Lake Counties.
3. The General Assembly of the Church Congregation can, by its constitutional authority, extend the jurisdiction of the Congregation to those places which are geographically and administratively embodied in the territory of the city of Cleveland and the counties mentioned in paragraph #2 if the members of the Serbian Eastern Orthodox Church in those places express the wish to become members of the Church Congregation, and if those places are not already integral parts of another Church Congregation.

4. All controversies concerning territorial jurisdiction with any other Church Congregation will be adjudged by the competent Diocesan authority.

## ARTICLE II

### Objectives and Purpose

1. The objectives and purpose of the Church Congregation shall be:

   A) To build, keep up and advance the Church, support all church schools and educational institutions which beneficially serve the advancement of the Eastern Orthodox Faith and Serbian Orthodox Culture.

   B) To spread and foster love and respect: for the Serbian Orthodox people, the people of the United States of America, the Constitution of the United States and the Democratic-American way of life.

   C) To extend through her work moral and material aid both to the Serbian people and her American homeland.

   D) To work to repel Godlessness, Atheism, Anarchism, Nihilism, Communism and all similar anti-religious movements.

   E) To help her sick, invalids and less fortunate members to the best of her ability.

   F) To endeavour to help all her members live in Christian love and brotherly concord.

## ARTICLE III

### Relationship to the Diocese

1. The church Congregation, functioning independently, is regarded an integral and organic part of the Serbian Orthodox Diocese of the United States of America

and Canada. She is subject to all the laws prescribed in the Diocesan Constitution, the Church Canons and the directives and decrees of the Diocesan Authorities founded upon the Diocesan Constitution and Church Canons.

2. By no decision of her own can the Church Congregation free herself of dependence upon the Diocese, nor can she secede therefrom except in the event that the Serbian Orthodox Church in Yugoslavia loses her freedom of function because of political circumstances. By contrary action, the Church Congregation will be legally regarded as non-existent, and all her personal property and real estate acquired under the conditions of dependence and belonging to the Diocese, will fall without any recompense, into the possession of the Serbian Orthodox Diocese of the United States of America and Canada.

## ARTICLE IV

### Official Language

1. The official languages of the Church Congregation shall be Serbian and American English.

# PART TWO

## Members and Membership

## ARTICLE I

### Qualifications for Membership:

1. All adult Serbians baptised in the Eastern Orthodox Faith, as well as persons of other nationalities who were baptised in the Eastern Orthodox Church, who by their own free will accept all the duties, burdens and obligations as set forth in these By-Laws and in the Diocesan Constitution shall be eligible to become members of the Church Congregation. Adulthood

is understood here to begin at the completion of eighteen (18) years of age.

2. Any person who, under the laws of this land, is under the care of parents or guardians shall become members only with the express consent of the parents or guardians. A married woman may become a member without the consent of her husband.

3. A candidate, who has made application for membership, shall not be accepted if during the consideration of his application the following convictions are made:

   A) That he does not fulfill the requirements as stated in Part Two, Article I, Sections 1 and 2.

   B) That he is a Godless person, a Nihilist, Anarchist, Communist or an ideological belonger to any other anti-religious movement.

   C) That he has been long active as a person described in Part B) of this Section. If it is proven beyond any doubt and a conviction is reached that for the past three years the concerned party has cut off any ideological connections with the above mentioned movements, groups or organizations, such a person shall be accepted as a member of this Congregation.

   D) That by his conduct he sets a bad example for others, and works by word or deed against the Church, the Congregation, the Church Officers, Orthodoxy, the Serbian people, the existing Priest, or the Diocese. Constructive or justifiable criticism of these persons and organizations shall not be a reason for denying membership in the Congregation to them nor that they be excluded.

4. Any person wishing to become a member of the Church Congregation shall be required to file a written application and to include therein all information as required in Part Two, Article I, Sections 1 and 3. In his application, the candidate shall declare all the

information therein to be true and that he shall be prepared to fulfill all the duties connected with membership. The candidate shall confirm his intentions by affixing his signature to the completed application.

5. The application shall be forwarded to the President of the Church Congregation who shall, at the first regular monthly assembly meeting; announce the name of the applicant and invite all members present to bring forth any comments concerning the applicant by the next regular monthly meeting. The assembly shall then decide, at this meeting, whether the applicant shall be accepted or rejected.

6. The applicant shall have the right to protest any decision which would refuse his acceptance as a member. The protest shall be taken to a higher Diocesan Authority by the President of the Congregation or it shall be forwarded directly to this authority by the applicant.

7. The assembly, at its regular monthly meeting, shall cancel acceptance of any member if, on the basis of new evidence, it is proven that the applicant did not fulfill all the conditions concerning membership.

8. A newly-accepted member shall be entitled to all rights and privileges of membership commencing on the day of his acceptance with the exception of the benefits of Fees accorded to members for special religious services. This privilege shall be available to the newly accepted member only after the completion of nine months of membership, calculating from the day of his acceptance as a member.

9. Members of the Serbian cultural, educational, athletic and musical organizations which cooperate with the Church Congregation, shall not be considered members of the Congregation by the very fact that they are members of their own organizations. Every such person wishing to become a member of the Church Congregation shall present an application for enroll-

ment as a member and shall fulfill all requirements provided for in Part Two, Article I, Sections 1 and 3.

10. All persons belonging to the Serbian Orthodox Church and living within the designated territory of the Congregation, who only avail themselves of the services of the Church, shall not be considered members of the Church Congregation until they are accepted as a member in the prescribed manner. These persons shall be considered only as parishioners.

## ARTICLE II

### Dues

1. The amount of monthly dues shall be designated for a year in advance by the general assembly at its annual meeting, computing the year from the first (1) of January to the thirty-first (31) of December.

2. A member of the Church Congregation shall pay his dues regularly. Members of the Circle of Serbian Sisters, persons who are in the Armed Services and students shall be exempt from paying dues. Members of the Circle of Serbian Sisters whose husbands are members of the Church Congregation shall enjoy all the benefits of membership if they are of the Eastern Orthodox Faith.

3. The annual general assembly shall, upon the request of a member, release the member from the obligation of paying dues if the assembly is convinced that the member is unable to keep up the prescribed payment of dues.

## ARTICLE III

### Rights and Duties of Members

1. A member of the Church Congregation shall attend church regularly, pay his dues regularly, attend meetings of the assembly, and participate in the work of

the assembly. If he is a member of any committee, he shall attend the committee meetings regularly and participate in the work of the committee. In each case, a member shall execute his duties exactly and conscientiously.

2. In all circumstances, the member shall work to achieve the objectives and purposes of the Church Congregation and shall do nothing to harm her reputation.

3. A member of the St. Sava Church Congregation shall have the right:

   A) To participate in all assembly meetings and all meetings of committees of which he is a member.

   B) To participate in all celebrations, outings, and other social events sponsored by the Church Congregation.

   C) To ask, receive the floor and speak concerning any question which is under debate at all assembly meetings and committee meetings of which he is a member.

   D) To cast one vote helping to bring about all the decisions of the assembly or committee of which he is a member.

4. These rights of the member shall be considered inherent in membership although the right:

   A) To speak may be limited and the floor may be denied only in the instances foreseen in these By-Laws.

   B) To cast a vote shall be denied only if he is removed from the meeting for disrupting order.

   C) To seek the floor, speak or cast a vote shall be denied a member who has not paid his dues for three months directly preceding an assembly meeting. A member who has not paid his dues to the Church Congregation for six months loses

the rights of membership prescribed in these By-Laws. If such a person applies again for membership, he must pay all the dues for the time during which he earlier enjoyed member's rights but did not pay for them.

5. A member of the Church Congregation shall have the right to bring forth to the assembly, the committees, or any other organ of the Church Congregation, a verbal or written motion on all questions which he considers concerns the Church Congregation or her members and may ask that the motions be decided upon. The assembly, committees, or organs are obligated to bring forth a decision on every such motion.

6. Every member of the Church Congregation has the right to certain benefits during religious services which privileges are designated by the regular annual assembly. The spouse of a member and his or her children, under the age of eighteen (18) have the right to these privileges if they are of the Eastern Orthodox Faith. A person who enrolls into membership and who has moved from the territory of any other Church Congregation has the right to these privileges under the condition that he was a member of the congregation from which he moved for at least one year.

## ARTICLE IV

### Termination of Membership

1. Membership shall be terminated in the following instances:

   A) Death of a member.

   B) When a member changes his place of residence to a place out of the territorial jurisdiction of this Congregation and there is no other Serbian Orthodox Church within the area of his new residence.

C) When a member renounces the Eastern Orthodox Faith.

D) When a member brings forth a written confirmation that he does not wish to remain a member.

E) When a member is expelled from the Church Congregation.

2. Reasons for expulsion shall be:

A) If a person is accepted as a member and it is shown that he did not fulfill the conditions stipulated when he became a member of the Church Congregation.

B) If a member works against the purposes and objectives of the Church Congregation.

C) If a member does not pay his debts to the church and congregation after being duly warned that he will be expelled.

3. Decisions on expulsions shall be brought forth at the regular Annual Assembly Meeting or at a special assembly called for that purpose.

4. Before a decision on expulsion is brought forth, the assembly shall appoint an Investigating Committee of three persons who will probe the situation, gather written evidence, hear witnesses, and then bring forth to the assembly a report with a recommendation either for or against expulsion from membership. The assembly shall return the case to the committee for further investigating if it feels that the case is not sufficiently well-investigated.

5. A motion to expel a person from membership may be brought forth by any member of the Church Congregation or by the Executive Committee. The member making the motion must submit a written motion and must include the reason for expulsion, as well as evidence for investigation. This motion shall be brought to the President of the Church Congregation who will in turn present it to the assembly for decision.

## PART THREE

### The Executive Organs of the Church Congregation

The Church Congregation shall be governed by the following organs:

1) The General Assembly
2) The Executive Committee
3) The Auditing Committee
4) The Priest—Rector
5) The Vestrymen

### ARTICLE I

### The General Assembly

1. The General Assembly of the Church Congregation is comprised of all members of the Congregation who enjoy full rights of membership.

2. There are three kinds of Assemblies: Regular, Special and Monthly.

The Regular Annual Assembly

A) The regular annual assembly meets every year in the month of December on the day designated by the Executive Committee.

B) The order of business for the annual assembly is designated by the Executive Committee.

C) The Chairman of the assembly must follow the order of business as so designated.

D) In case certain questions and motions arise which are not foreseen in the Order of Business; the Chairman of the Assembly shall include them only under the heading "Questions and Suggestions", and then the Assembly will discuss and decide upon them.

E) The Executive Committee has the duty to designate the date of the notice of the regular Annual Assembly a month in advance.

F) The Executive Committee shall forward a written invitation to each individual member and the Order of Business shall be included in the invitation.

G) If possible, the Executive Committee will announce the calling of the Assembly by means of public communication.

H) A regular Annual Assembly, which is not called properly, cannot decide with authority and all her decisions will be considered invalid.

I) Upon the request of any member of the congregation or by the duty of its office the higher competent Diocesan authority will nullify the work of a regular annual assembly which has been improperly called.

J) The regular annual assembly will decide the propriety of the calling of the assembly before it begins the order of business.

3. The Special Assembly

A) A Special Assembly shall be called in the same manner as the regular Annual Assembly is called.

B) In regard to the propriety of the calling, the same By-Laws applying to the calling of the Regular Annual Assembly shall apply for the calling of the Special Assembly except in urgent cases when the Executive Committee shall shorten the time of the notice.

4. The Monthly Assembly

A) Invitations to the members for the Monthly Assembly Meetings shall be made by a written notice placed in the buildings of the Church Congregation, by the announcement of the Priest in Church or by any other convenient means.

B) In important instances, the Executive Committee shall forward an invitation to each individual member.

5. The Regular Annual or Special Assembly shall be opened by the President of the Executive Committee who shall invite the membership to elect a governing body for the Assembly consisting of a Chairman, Vice-Chairman, Secretary, and two members to verify the minutes: The Elected Secretary shall record the minutes of the proceedings of the Assembly.

6. Work shall begin on the order of business after the opening of the Regular Annual Assembly and following the election of the governing body of the Assembly.

7. The election of a new Executive Committee shall be held along with the election of all other officers in the Church Congregation after the reports are given concerning the work of the Executive and Auditing Committees of the previous year.

8. Before proceeding to work on any other business and immediately following the election of the Executive Committee of the Church Congregation, the newly elected members shall take the oath of office before the Priest and in the presence of the entire Assembly vowing that they will execute their duties honestly and conscientiously.

9. The names of the newly elected officers of the Church Congregation shall be submitted to the Diocesan authorities not later than fifteen days following the Regular Annual Assembly meeting at which they were elected.

10. The new officers shall accept the duties of office from the previous officers at the first Monthly Assembly meeting in the month of January and they will present the monthly reports at the first meeting in February.

11. The Executive Committee of the Church Congregation shall have the authority to call a Special Assembly Meeting in the event that during the year, an im-

portant question arises upon which a decision cannot be delayed until the Regular Annual Assembly.

12. The Executive Committee shall have the authority to call a Special Assembly Meeting upon the request of one-third of its members and also in the event that such a meeting is requested by the Diocesan authorities.

13. A Special Assembly Meeting shall bring forth a decision only upon the question for which it was called.

14. After the first invitation, if the Regular Annual or Special Assembly Meeting is not attended by one-fourth of the members in good standing, a new Assembly Meeting shall be called within a period of fourteen days. This Assembly Meeting shall have the authority to decide upon the question if there are more than one-eighth of the members in good standing present.

15. After the second invitation, if there are not one-eighth of the members present, this shall be recorded into the minutes which will be signed by the President of the Assembly, the Priest and the Secretary of the Assembly. The minutes, with a report, shall be sent to the Diocesan authorities by the Executive Committee.

16. If any disorder arises at the Assembly which would make it impossible to carry out the work of the Assembly, the President of the Assembly shall recess the meeting for thirty minutes. If the same disruption reoccurs, the President shall postpone the meeting for a more opportune date and he will take the necessary measures against whosoever caused the disorder.

17. The Regular Monthly Assembly Meeting, which shall be called by the Executive Committee every month, shall render a decision with full authority if there is an attendance of not less than twenty members. If there are less than twenty members at the Monthly Assembly Meeting, this meeting shall be postponed.

18. The President of the Assembly shall preside over the Assembly Meetings and the President of the Executive Committee shall preside over the Monthly Assembly Meetings. The President, who is presiding over a meeting, shall give the floor to a speaker in the order in which he has called for it, and the Secretary shall take, in brief, the minutes of everything which is decided upon at the Assembly Meeting.

19. The President shall deny the floor to any speaker who, in his speech, does not adhere to the order of business, who insults, and whose behavior is unbecoming to the Assembly. If the speaker continues to misbehave after he has been duly warned by the President that he will be removed from the meeting, the President shall have him removed.

20. The agenda for the Regular Annual Assembly meeting shall consist of:

A) The election of the governing body of the Assembly.

B) A report on the work of the previous year's Executive Committee.

C) Relieving the previous year's Executive Committee of its duties.

D) The election of a new Executive Committee.

E) Make decisions on questions which do not fall in the category of work for the Executive Committee or the Monthly Assembly Meeting.

F) Decisions on the salary of the Priest, teachers and other persons who work for the Church Congregation.

G) Decisions which concern the economy of the Church Congregation and the property of same.

H) Decision on the yearly contribution to the Diocese.

1) Questions and motions.

21. The agenda for a Special Assembly Meeting shall concern itself only with the question for which it was called.

22. The Agenda for the Monthly Assembly Meeting shall consist of all questions which concern the current business of the Church Congregation if the Executive Committee decides that the problem should be presented to the Assembly for approval.

23. The election of a new Executive Committee shall not take place at a Monthly Assembly Meeting.

24. Salaries for employees of the Church Congregation shall not be set at a Monthly Assembly Meeting.

25. The Church Congregation shall not be put into debt and in no manner whatsoever shall the property of the Church Congregation be sold or transferred during the course of a Monthly Assembly Meeting.

26. All decisions brought forth during a Monthly Assembly Meeting shall obligate the Executive Committee to carry them through.

27. Every monetary disbursement from the treasury of the Church Congregation which is shown to be necessary and stems forth from the regular business of the Executive Committee shall be approved by the Monthly Assembly Meeting.

28. In every controversial issue between the Assembly and the Executive Committee the decision of the Assembly shall be final and the Executive Committee or any other organ of the Congregation shall abide by the decisions of the General Assembly.

29. There shall be special regulations concerning the Priest.

30. All decisions of the Assemblies shall be brought forth by a majority vote of the members present. In the

event there is a tie, the vote of the presiding officer shall decide. This applies in all instances of decision among the committees.

## ARTICLE II

### The Executive Board of the Church Congregation

1. The Church Congregation shall be headed by the Executive Board which consists of the Executive and Auditing Committees.
2. The Executive Committee shall consist of:
   A) The President
   B) Two Vice-Presidents
   C) Secretary
   D) Treasurer
   E) Financial Secretary
   F) Four Vestrymen
   G) Three Committeemen
3. The Executive and Auditing Committees shall be elected by the Regular Annual Meeting or a Special Assembly Meeting.
4. The Priest or rector, shall be a member of the Board by virtue of his position.
5. A regular meeting of the Executive Committee shall be held once a month and special meetings shall be held when deemed necessary.
6. The meeting shall be called by the President who, in agreement with the members of the Committee, designates and arranges the order of business.
7. The President shall call a meeting of the Executive Committee if it is requested by one-third of the Committee Members.
8. The Executive Meetings shall be opened and closed with a prayer.

9. A decision of the Executive Committee shall be considered valid if all the members of the Committee were properly notified of the meeting and if the decision was agreeable to all members present shown by a majority vote.

10. The Executive Committee Members shall validly decide among theinselves if a majority of the elected officers are present.

11. In the event that the first meeting is not attended by a majority of the elected members of the Executive Committee, the meeting shall be recalled within a period of eight days, at which time, one-third of the elected members of the Committee shall validly decide upon any questions.

12. In the event that one-third of the Executive Committee members are not present at the second called meeting; the President shall have the right to call a Special Assembly Meeting at which time he shall bring forth the question of the trustworthiness of the Committee.

13. The Executive Committee shall be compelled to strictly abide with the By-Laws of the Church Congregation and the Diocesan Constitution.

14. The Duties of the Executive Committee shall consist of:

A) Deciding the date and location of the Regular Annual Assembly Meeting for the Church Congregation.

B) Preparing motions for the approval of the general assembly.

C) Executing the decisions of the general assembly.

D) Taking inventory of all the real and personal property of the Church Congregation, in duplicate, one copy of which shall be sent to the Diocesan authorities.

E) Ministering over and managing all the real and personal properties of the Church Congregation and to concern itself with the upkeep of same.

F) Deciding upon the procurement of all things necessary for the building and reparation of the Church, Rectory and other buildings.

G) Sponsoring lectures, cultural affairs, stage presentations, picnics and socials and keeping up the church library.

H) Helping the Priest and teachers in the moral and cultural education of the people.

I) Awakening and fostering love, zeal and sacrifice for the Serbian Orthodox Church and School.

J) Representing the interests of the Church and school in all outside relations, with non-members, the authorities as well as with the members.

K) Helping the teaching staff in all its duties and see to it that their duties are properly executed.

L) Executing all the work for the Church Congregation which cannot be handled by the Assembly meetings.

15. The President of the Executive Committee shall also be President of the Church Congregation and his duties shall be:

A) To preside at all meetings of the Executive Committee and the Monthly Assembly Meetings.

B) To receive, open and expedite all mail which concerns the Church Congregation.

C) To call Executive Committee Meetings and Monthly Assembly Meetings.

D) To open and close Executive Committee and Monthly Assembly Meetings.

E) To keep order and peace throughout the meetings.

F) To present motions for discussion, put them up for a vote and announce the decisions.

G) To see that the meetings are held strictly to the order of business.

H) To warn a speaker who has gone astray of the order of business, to reprimand him and, if necessary, deny him the floor.

I) To recess the meeting for fifteen minutes in the event of disruption and disorder and if order is not restored after this time, the President shall adjourn the meeting.

In all instances, parliamentary procedure shall be adhered to.

16. The Vice-President's duties shall be:

A) To execute the presidential duties in the event the President is unable to do so.

B) The First Vice-President shall take the place of the President in the event the President does not attend a meeting.

The meetings shall be postponed if neither of the Vice-Presidents or the President attend the meeting.

17. The Secretary's duties shall be:

A) To take the minutes of the work of the meeting.

B) To handle the congregational mail and correspondence.

C) To keep the protokol of the congregations work and preserve the archives.

D) To sign the minutes of the work of the meetings and all letters sent out in the name of the congregation along with the President of the congregagation.

18. The Treasurer's duties shall be:

A) To cooperate with the vestrymen, and the financial secretary in accepting money from the Church Congregation.

B) To manage the real and personal property of the Church Congregation according to the directions and decisions of the Executive Committee and the General Assembly, and in the spirit of the Diocesan Constitution and By-Laws of the Church Congregation.

C) To keep a treasurer's book showing the income and disbursements of the Church Congregation for the entire year.

D) To accept money from the vestrymen and other persons and deposit it into the bank in the name of the Church Congregation.

E) To pay the Congregational staff and all other congregational disbursements.

F) To co-sign all checks with the President of the Church Congregation.

G) To present a monthly report at the Assembly Meeting, in cooperation with the financial secretary and vestrymen, concerning the standing of the treasury and the congregational property.

19. The Financial Secretary's duties shall be:

A) To keep a record of the members' payment of dues.

B) To accept members dues and enter them in the dues books and turn the money over to the Treasurer.

C) To keep records of the payment of individuals' dues and to notify all delinquent members of their duties.

D) To issue membership books to the members.

20. The Vestrymen's duties shall be:

A) To attend church regularly for all worship services and rituals.

B) To accept money in church for candles, collection plate and other donations.

C) To concern themselves with all the necessary things connected with the church and church services.

D) To give to the Treasurer as soon as possible any monies they have collected.

E) To properly handle the financial record books entrusted to them.

21. Each person who is entrusted with the management of the Church Congregational properties shall be bonded.

A) The amount of the bond shall be decided by the Annual Regular Assembly or a Special Assembly called for that purpose.

B) The Premiums shall be paid by the Church Congregation.

## ARTICLE III

### The Auditing Committee

1. The Auditing Committee shall consist of from three to five persons who are elected by the Regular Annual Assembly or a Special Assembly called for that purpose.

2. The duties of the Auditing Committee shall be:

A) To oversee that the Congregation's properties are managed properly.

B) To call the attention of the Executive Committee to all improper things concerning the management of the Congregation's property, and shall see to it that it is corrected.

C) To audit and control all financial transactions of the Church Congregation and its organs.

D) To request of any organ of the Church Congregation, which manages the Congregation's property, that they submit in entirety, their business, books, financial records and documents for an audit.

E) To request the Executive Committee to submit in entirety all of its business, concerning the Congregation's property, books, financial records and all other documents connected with their business.

F) To submit a report every three (3) months at the Regular Monthly Assembly Meeting and a general report at the Annual Assembly Meeting or a Special Assembly Meeting.

G) To present in its report its opinion as to whether or not the work of the Executive Committee has been proper. If the work was improper, it must state wherein were the improprieties.

## ARTICLE IV

### The Priest-Rector and Teachers

1. The Parochial Priest of the Church Congregation shall be a person who is ordained into the priestly orders according to the law and canons of the Serbian Orthodox Church and who the regular annual general assembly of the Church Congregation or special assembly called for that purpose, accepts for the priest of the congregation on the basis of a concurrance and confirmation of the Diocesan bishop.

2. The concurrence for the election of a priest for the Church Congregation shall be defined in the following manner:

   A) The Church Congregation shall elect a priest from a list of candidates submitted by the Diocesan bishop.

   B) If the Church Congregation does not approve of any of the persons on the list of candidates for its priest, it shall so inform the Diocesan bishop.

3. The duties and authority of the priest and the teachers shall be governed by Articles 118 to 145 of the Diocesan Constitution.

## ARTICLE V

### The Cantor and Church Choir Director

1. The Executive Committee of the Church Congregation, in agreement with the Priest, shall contract a Cantor for chanting in church and a church Choir Director to lead the choir in singing responses in church.
2. A contract shall provide the salary for the Choir Director.
3. One person may be both Cantor and Choir Director.
4. The contract shall list the duties and rights of the contracting parties.

# PART FOUR

## ARTICLE I

### Property and Funds

1. The church property shall consist of real and personal property recorded as owned by the Church Congregation. This property shall serve the needs of the Church Congregation in achieving its objectives and purposes.
2. Management and use of the property of the Congregation shall fall directly and exclusively to the Church Congregation.
3. The Executive Board shall not make any monetary or material expenditures without the permission of the Regular Annual or Special General Assemblies except those which the Assembly has already authorized or those which concern the current business and the pay-

ment of bills for the upkeep of the Congregation's property, the Rectory, the Congregation's school and similar instances.

4. The Executive Board shall present a report of all disbursements at the Regular Monthly Meeting and ask that the Assembly approve them.

5. The Congregation shall not be put into debt, nor may the real property of the Church Congregation be transferred, nor may a gain of real property be made for the Church Congregation by assuming a burden without the permission of the Regular Annual or Special Assembly Meetings.

6. The Monthly Assembly Meeting shall be authorized to bring forth decisions only concerning the disbursements and use of the Congregations property and all the expenses of management.

7. The Executive Committee shall be authorized to accept all gifts and other contributions for the Church Congregation without first seeking the permission of the Assembly.

8. The Executive Committee shall manage the separate funds and bequests founded by any individuals for the benefit of the Church Congregation.

   A) These funds and legacies shall serve exclusively those purposes for which they were intended; hence, they shall not be used for any other purpose.

   B) If the purpose ceases to exist, the Executive Committee shall suggest to the Regular Annual Assembly or a Special Assembly to decide if the funds and legacies are to be used for other religious and educational purposes for the benefit of the Church Congregation.

   C) The Committee shall present a report concerning these funds and legacies in their yearly report and ask the Assembly to approve it.

## PART FIVE

### ARTICLE 1

### Complaints

1. Complaints against decisions of the Congregation Committee shall be made to the Regular Monthly Assembly regarding things which it is authorized to decide upon, its decision being final.

2. Complaints against the decisions of the Regular Annual or Special Assembly Meeting shall be made to the higher Diocesan authorities.

3. Complaints against the decisions of the Executive Committee regarding things which fall into the category of the Regular Annual Assembly shall be made to the Regular Annual Assembly, whose decision shall be final.

4. Complaints against any committee of the congregation, except the Executive and Auditing Committees, shall be made to the Executive Committee, whose decision shall be final.

5. A complaint against the President of the Church Congregation shall be made to the Executive Committee, whose decision shall be final.

6. A complaint against the Priest-Rector, concerning Canonical subjects, shall be made to the higher Diocesan authorities and in all other instances, complaint shall be made to the Executive Committee, whose decision shall be final.

7. Any member of the Church Congregation, as well as all parishioners and non-members, shall make complaints if they feel that their rights or interests have been harmed by a decision of any organ of the Congregation.

8. A written complaint shall be given to the President of the Church Congregation who shall send it to the higher authorities for a decision.

9. The complainant may request a written confirmation to prove that his complaint was forwarded to the proper authorities.

10. Complaints shall be filed within thirty days of the decision in question counting from the day that the plaintiff learned of the decision and not later than one year from the day the decision was brought forth.

## PART SIX

### ARTICLE I

Changes and Amendments to the By-Laws

1. The Regular Annual or Special Assembly, called exclusively for the purpose, shall be authorized to change the entire By-Laws or separate Articles within the By-Laws and may also amend them.

2. The Executive Committee of the Congregation, or at least one-third of the members, shall bring forth a motion to change or amend the By-Laws which has been formed into a motion and signed by them.

3. All motions to change or amend the By-Laws shall contain a clear request in which and because of which the By-Laws should be changed or amended.

4. Every motion shall be in agreement with the Diocesan Constitution.

5. The Executive Committee, through its President, shall call a Special Assembly Meeting to decide upon the changes and amendments if the Regular Annual Assembly cannot decide upon it.

6. This shall be in effect whether the motion was made by the President himself or by one-third of the members.

7. Invitations explaining the motion shall be sent to each individual member.

8. If the motion is made for the Regular Annual Assembly, the invitation shall contain the motion for the change and amendments of the By-Laws.

9. If a motion for a Special Assembly is made by one-third or more of the members, it shall be given to the President of the Congregation, who shall when he is convinced that the motion is signed by the necessary amount of petitions, call a special Assembly for a date not later than one month from the time that he is convinced that the motion was signed by members in good standing; and at the latest; two months from the day he received the motion.

10. If the President does not call a Special Assembly within the designated time, the Assembly shall be called authoritatively by the first three members who signed the motion.

11. If these three members are not able to do so, or if one of them died, the Assembly shall be called by any three signers of the motion.

12. Any decision on a change for an amendment to the By-Laws shall become effective when it is confirmed by the authoritative Diocesan Head.

## PART SEVEN

### ARTICLE I

### The Church Congregation

1. The Church Congregation shall cease to exist in the following instances:

   A) When the Church Congregation decreases in membership to the extent that it is unable to keep up the church property or maintain the Priest.

   B) When the Church Congregation works against the spirit of its purpose.

2. The decision of discontinuation of a Congregation shall be authorized by the higher Diocesan head.

3. In the event of a situation described in Article I, Section 1, Part B) Part Seven, this authority shall decide that the Church Congregation shall cease to exist under the condition that the members of the Congregation who have not deterred from the fulfillment of its Objectives and Purpose shall agree upon it. This shall be effective if Section 4, Part B of this Article has not been presented for decision.

4. If the majority of the members of the Church Congregation decide that the Church Congregation ceases to exist, this decision shall not have any authoritative value.

5. The life of the Church Congregation shall continue with those members who vote that the Congregation remain intact if they are in a position to accept the responsibilities of keeping it up. (583-1)

6. In the event of the eventual cessation of the congregation, all of its property, papers, archives, etc. shall fall into the ownership of the Serbian Orthodox Diocese of the United States and Canada.

## PART EIGHT

### ARTICLE I

### Provisional and Final Articles

1. All members of the Church Congregation who, in the spirit of these By-Laws, are members in good standing on the day these By-Laws are put into effect, shall be considered members in good standing of the Church Congregation.

2. All properties acquired up to this date shall be considered as belonging to the Congregation in the spirit of these By-Laws.

3. All decisions concerning the work of the Church Congregation and all of its organs which were brought forth up to the day these By-Laws go into effect shall

be considered authoritative if they have been presented in the spirit of the Diocesan Constitution and these By-Laws.

4. These By-Laws shall go into effect when they are accepted by the Regular Annual or Special Assembly Meeting and after they have been confirmed by the higher Diocesan authorities.

This year of 1955

# CONSTITUTION

## SERBIAN ORTHODOX DIOCESE

in the

## UNITED STATES OF NORTH AMERICA AND CANADA

Published by

THE DIOCESAN ADMINISTRATION OF

AMERICA-CANADA

1939

Translated by: V. Rev. M. D. Mijatovich

# CONSTITUTION

## SERBIAN ORTHODOX DIOCESE

## in the

## UNITED STATES OF NORTH AMERICA AND CANADA

accepted at the Diocesan Church National Assembly in 1927, and amended and revised at the Diocesan Church National Assemblies of 1931 and 1938, approved by the decision of the Holy Bishop's Synod of the Serbian Orthodox Church, Sin. No. 2386 Zap. 1457 of December 1/14, 1928 (in accordance with the authorization of the Holy Bishop's Assembly of the Serbian Orthodox Church A.S. No. 14 77 of 12-25, 1928) and decision of the Holy Bishop's Assembly of the Serbian Church, dated May 24-11, 1939 A.S. No. 63-132, 1939.

CONTENTS:

GENERAL STATUTES

I

DIOCESE AND DIOCESAN BISHOP

II

DIOCESAN CHURCH – PEOPLE'S ASSEMBLY

III

DIOCESAN COUNCIL:

1) Diocesan religious-educational board;
2) Financial-administrative board.

IV

DIOCESAN ECCLESIASTICAL COURT

V

LOWER DIOCESAN ORGANS:

1) archpresbyterates and archpresbyters;
2) church-school congregations and their organs;
3) parishes and parish offices.

VI

PROPERTY AND FUNDS:

A) 1. Diocesan property;
   2. Church-school property.
B) 1. Diocesan funds;
   2. Separate funds, pledges.

First Part

# DIOCESE AND DIOCESAN BISHOP

## I

## POSITION OF THE SERBIAN ORTHODOX DIOCESE in the UNITED STATES OF NORTH AMERICA AND CANADA

### Article 1

The Serbian Orthodox Diocese in the Northern States of America and Canada is considered ecclesiastically-judicially as an organic part of the Serbian Patriarchate in the Kingdom of Yugoslavia and enjoys all the benefits which originate therefrom.

### Article 2

All statutes and rules which regulate the ecclesiastical-canonical authority and position of the Serbian Orthodox Church in the Kingdom of Yugoslavia are also compulsory for the Serbian Orthodox Diocese in the United States of North America and Canada, with the exception of specific cases which must be formulated with regard to local circumstances in accordance with ecclesiastical and judicial principles.

### Article 3

The jurisdiction of the Serbian Orthodox Diocese in the United States of America and Canada with its Diocesan See in Chicago, includes the entire political territory of the United States of America and Canada, which as such by its geographical location enjoys full administrative freedom and accordingly, it can independently regulate and rule the activities of its church, school and other diocesan institutions and all funds and beneficences, through its organs, but in accordance with the laws of this constitution and in agreement with the laws of the United States of America and Canada.

## Article 4

The Serbian Orthodox Diocese in the United States of America and Canada is comprised of Serbian Orthodox Church school Congregations, Parishes, churches, monasteries, archpresbyterates, established within the territory of the above mentioned states and which fall under the spiritual, executive, ecclesiastical judicial and controlling authority of the diocesan organs (Bishop and Diocesan Council). Therefore, every Serbian Orthodox Church-School Congregation, church, monastery, and archpresbyterate already existing or which shall be established in the above mentioned territories, must be in ecclesiastical canonical bond with this Diocese and recognize its authority and power.

## Article 5

This Constitution embraces all legislative and administrative organs of the Diocese and by it are regulated the following church authorities and its organs:

A) DIOCESAN CHURCH – NATIONAL ASSEMBLY, whose executive and administrative organ is the Diocesan Council which is composed of two committees:

1) Diocesan Religious-Education Board, and

2) Diocesan Financial-Executive Board, and

B) DIOCESAN ECCLESIASTICAL COURT,

lower authorities and organs are:

1) District archpresbyterates whose organs are archpresbyterate offices and archpresbyters;

2) Serbian Orthodox Church-School Congregations, the organs of which are the church-school general assemblies and executive boards, and

3) Serbian Orthodox Parishes, the organs of which are the parochial chanceries and the parish priests.

Article 6

Every organ of the church-school board in the Diocese is subordinated in all executive matters directly to the higher executive organs of the Diocese.

Article 7

The filing of complaints against decisions of the diocesan authorities must be submitted within a 30-day period excluding the date of decision, namely date of receipt, and it is considered that the complaint is duly presented if filed before the 30-day expiration date.

Article 8

The diocesan authorities decide independently on all matters within their jurisdiction and in accordance with this Constitution, so that the protection of the civil authorities cannot be sought against their decisions except if same conflicts with the laws of the United States and Canada.

II

DIOCESAN BISHOP

Article 9

The Bishop of the Serbian Orthodox Diocese in the United States of America and Canada is appointed by the Holy Assembly of Bishops of the Serbian Patriarchate.

Article 10

The Bishop by virtue of his archipastoral calling is privileged in granting church-educational directives in the general activities of the diocese.

The following comes within the jurisdiction of activity of the diocesan bishop:

a) to preserve, defend and sustain among the people, One, Holy, Ecumenical and Apostolic church and repel all activities contrary to Orthodoxy;

b) to see that the divine worship in church is conducted in accordance with the church Law-constitution;

c) to endeavor, in accordance and in co-operation with the Diocesan Council, that new church-school congregations be established, that churches be erected and repaired, and he, himself, to check and to approve the holy icon screens, murals and all important church-serving essentials and vestments;

d) to see that all churches are supplied with Holy Chrysm, service books, crosses and generally with all necessary church articles essential for the divine worship, as well as that all be kept in good order and recorded in a special inventory;

e) to consecrate new churches and corporals;

f) to make canonical visitations in his Diocese in accordance with church-regulations;

g) to ordain worthy persons with theological training to priesthood, if needed; to appoint them to parishes and to elevate deserving clerics in all priestly and monastic orders;

h) to execute all canonical orders of the Holy Assembly of Bishops;

i) to appoint replacements for deceased abbots, vicar-generals and priests until the election of his permanent replacement;

j) to appoint substitutes for those priests on vacation or sick-leave or who have been assigned to perform some national or official duty;

k) to direct, when a church is closed due to building hazards and it being unsafe to serve in same, where the church serving essentials are to be stored for safe-keeping and where the priest will conduct services.

l) to decide questions of degrees in relationships and to, within the canonical limitations and the decisions of the Holy Bishop's Assembly, render dispensations to related persons to wed; and to grant dispensation from announcements in instances of proven necessity.

m) to grant leaves for priests and personnel of the Ecclesiastical Court;

n) to mitigate the degree of punishment pronounced by the Ecclesiastical Court, if he finds justifiable cause to do so;

o) to inform the clergy and laity of various canonical directives from the Holy Pontifical Synod;

p) to submit to the Holy Bishop's Assembly of the Serbian Patriarchate an annual report of his archipastoral activities; and,

(q) to prepare, accept and appoint new priests for this Diocese according to the indicated need and with prior agreement of the Ecclesiastical Court.

## Article 11

The Diocesan Bishop, within his canonical rights, will issue when the need arises, greetings and epistles to the clergy and laity of his diocese, in order to strengthen faith and Christian morals.

## Article 12

The Diocesan Bishop in the United States of America and Canada is obliged to recognize as the head of the Serbian Patrjarchate, the Archbishop of Ipek, Metropolitan of Belgrade-Karlovac and Serbian Patriarch, whom he mentions in all services. He shall not make any changes or innovations in the established order and work of the church without prior agreement with him.

Accordingly, the Diocesan Bishop shall submit to the Serbian Patriarch for review, all regulations which may be

issued by any diocesan authority, which shall if they touch upon the sphere of internal church administration, be subject to the approval of the Holy Pontifical Synod, as the highest executive church authority.

Should the Diocesan Bishop find by his own assurance, that decisions rendered by any church authority or organ are contrary to the teachings of the Holy Church, her regulations and canons, or to the vital interest of the church, he shall halt the execution of such decision and submit the matter for rediscussion and redecision. If he again is not in accord with redecision as reconsidered, he shall submit the case for final decision to a higher authority and if necessary, to the Holy Pontifical Synod.

## Article 13

In the event of illness or absence, the Diocesan Bishop assigns his own substitute and designates his authority. When the seat of the Diocese Bishop is vacated, the administration of the widowed diocese is upheld in all her spiritual and administrative matters by the Ecclesiastical Court and the Diocesan Council until the appointment of an administrator, which appointment is made by the Serbian Patriarch with the Holy Pontifical Synod.

## Article 14

The administrative divisions of the Diocese into archpresbyterates and vicar-generalties, as well as all the boundaries of the parishes, is done by the Bishop together with the Ecclesiastical Court and the Diocesan Council when the need calls for same.

The Diocesan Bishop is at the same time the supreme head of the St. Sava Monastery in Libertyville. He appoints the abbot of same and conducts the canonical supervision and the higher executive authority over the monastery.

## Second Part

## DIOCESAN CHURCH NATIONAL ASSEMBLY

### Article 15

The Diocesan Assembly is the main legislative and controlling body in the Diocese and represents the entire Orthodox Serbs in the United States of America and Canada.

### Article 16

The Diocesan Assembly consists of:

1) Delegates elected by individual church school congregations, namely two laymen.

2) Both orders of all the Serbian Orthodox clergy.

3) Diocesan Bishop.

4) all members of the Diocesan Council.

5) All Serbian colonies who are without a church and priest, but who have a regular school operating under Diocesan jurisdiction, have the right to two delegates, one of whom is obligatory the teacher of the school.

6) Representatives of the people at large and distinguished educators and friends of Orthodoxy and of our people's welfare are privileged to attend all Diocesan Assembly meetings in the capacity of advisory members, but without the right to vote.

### Article 17

All delegates must possess the prescribed credentials which must be verified by the Credentials Committee.

### Article 18

The traveling expenses of the delegates are financed by their respective organizations, namely, congregations.

Article 19

Delegates of one organization may also represent another organization in cases where the necessity is justified, in which event both organizations, i.e. congregations share in the delegates expenses equally.

Regardless of how many congregations or organizations they might represent according to the submitted credentials, all delegates are entitled to only one vote each. Each delegate must be a member in good standing of the church school congregation and as such may be elected to the Diocesan Council. In case he ceases to be a member of his church school congregation, he automatically ceases to be a member of the Council.

Article 20

The Diocesan Assembly meets in session every third year in the month of September or on the day designated by the Diocesan Bishop where the Episcopal See is located - Libertyville - decides on all administrative, legislative, financial and religious-educational church matters which concern the entire Diocese ie. its constituents.

Article 21

The election of the delegates to the Diocesan Assembly should be made, if possible, a month prior to the Diocesan Assembly.

Grievances against elected delegates for the Serbian Church National Assembly are directed to the Diocesan Council within eight days from the date of election.

Article 22

The Diocesan Assembly is opened by the Diocesan Bishop who is by virtue of his high calling, the president of the assembly. Upon opening the assembly he shall invite same to be duly constituted and to elect the necessary presidium: two vice-presidents, one of whom is a priest, and one a layman and two or more secretaries.

Article 23

The Diocesan Assembly upon being duly constituted, performs the following:

1) changes and amends the order of agenda submitted by the Diocesan Council;

2) accepts reports of the Diocesan Council dealing with the entire work in the Diocese for the past three years;

3) decides concerning the sources and acquisition of revenue required for the maintenance and support of the Diocese;

4) approves the program of work of the Diocesan Council for the ensuing three years;

5) decides on all matters which the Diocesan Council submits for consideration;

6) elects the Diocesan Council for a three year term;

7) controls the assets of the Diocese, the entire past year's work of the Diocesan Council and its organs;

8) decides on changes and amendments to the Constitution with the approval of the Holy Bishop's Assembly of the Serbian Patriarchate.

## Third Part

## DIOCESAN COUNCIL

### Article 24

The Diocesan Council is the main executive and controlling board in the Diocese for external church religious and educational matters.

### Article 25

The Diocesan Council, in addition to the Bishop, is composed of twelve regular members elected by the

Diocesan Assembly for a period of three years, seven of whom are of the laity, five are of the clergy and six alternates, four of whom are of the laity and two of the clergy.

Article 26

Members of the Diocesan Council may not be related to one another or to the Bishop to within four degrees of canonical computation, neither as blood relatives or through marriage.

Article 27

The mandate of the members of the Diocesan Council continues for three years beginning from the day of election. Until that time, old members perform the work of the Council.

Article 28

Membership in the Diocesan Council is honorary and therefore is fulfilled without any compensation, except in the cases of members from afar whose traveling expenses are paid.

Article 29

Upon assuming their positions of trust, the members of the Diocesan Council must at an open meeting take an oath before the Bishop stating that they will perform their duties conscientiously, correctly and objectively and to the best of their abilities fulfill same and that they will keep in strict confidence official secret deliberation.

Article 30

The Diocesan Council is comprised of two sections—committees;

I. Diocesan financial-executive committee and

II. Religious-educational committee

a) Each of these two committees, aside from its president, has six additional regular members: the

religious educational committee has three laymen and three clergymen and the financial executive committee has four laymen and two clergymen. Alternate members, three from the clergy and three from the laymen, are appointed by the Bishop for each committee in accordance with the Diocesan Council.

The president or vice president may designate one member from either section to preside over either section in case of necessity.

b) The Diocesan Council holds its meetings thrice annually and if necessary, more frequently;

c) the president of the Diocesan Council is the Diocesan Bishop. The vice president is appointed by the Bishop in agreement with the Diocesan Council. He is simultaneously the vice president of every diocesan body except the Ecclesiastical Court, if he is not a clergyman;

d) The diocesan secretary, who is at the same time the secretary of the Diocesan Council also, is appointed by the Bishop as a permanent clerk of the Diocese. The secretary of the Diocese is paid his wages from the Diocese Treasury;

e) The referent of the Diocesan Council is the diocesan secretary or an especially appointed member of the Diocesan Council;

f) Should a vacancy occur in the Diocesan Council, it is filled by election of the Diocesan Council.

## Article 31

The committees of the Diocesan Council hold their meetings regularly once a month, or when necessity demands. Each regular member of the committee, if he is unable to attend a meeting, is obliged to notify the president of the Council on time, who will then take the necessary steps to invite an alternate member to the said meeting.

Article 32

In rendering valid decisions in the Diocesan Council, it is necessary that two thirds of the members be present besides the president and vice-president.

In order that the committees of the Diocesan Council might render valid decisions, it is necessary that two-thirds of its members be present personally or represented by their alternates in addition to the president i.e. vice-president.

Article 34

At meetings of the Diocesan Council and the committees of the Diocesan Council, minutes must be kept in which are reported the names of the present members, reason for absence of those not present, remarks to the minutes of the previous meeting, announcements and correspondence which comes within the scope of their and ...y, issues which have been discussed and voted up... the results of the vote and realized conclusions with no...ions as to how those present voted individually. The minutes must be signed by all present and excerpts of the minutes only by the secretary with the seal of the Diocesan Council.

Article 35

Grievances submitted within the prescribed time limit against the decisions of the committees of the Diocesan Council will be decided by the Diocesan Council in plenum.

Article 36

JURISDICTION OF THE DIOCESAN COUNCIL

General Duties are as follows:

1) To see that church-school congregations, monasteries and all its organs preform their duties correctly and conscientiously;

All liens against church-school congregation property (mortgages) must be previously approved by the Diocesan Bishop, i.e. the Diocesan Council; in regard to incurring debts in general, the church congregation may indebt itself only up to the sum of five hundred dollars without the consent of the Diocesan Council;

2) to prepare and submit necessary regulations, orders, instructions and decisions in this respect and in the matters of all executive and religious-educational needs of the diocese;

3) to prepare and submit to the Diocesan Church-National Assembly, recommendations for various regulations and directives which are to be legislated by this body for the entire diocese;

4) to conduct the election of delegates to the Diocesan Church-National Assembly in accordance with the rules of this Constitution;

5) to decide in the matters of the Diocesan income and assessments;

6) to set up its own agenda;

7) to create funds required for the entire Diocese;

8) to receive and debate the reports of its committees-sections and to consider their activities and the status of the Diocese and to render appropriate decisions on the subject of said reports;

9) to debate the grievances submitted against the decisions of the committees-sections of the Diocesan Council;

10) to submit recommendations, according to the need, to the Diocesan Assembly for the change and amendment of this Constitution;

11) to initiate and extend such tasks which it might consider to be generally beneficial.

Article 37

In matters of administration and control:

1) to consult on all relations and needs of the Serbian Orthodox religious schools for religious-education and to bring forth in that respect, necessary decisions and directives;

2) to prepare and submit regulations for the entire Diocese in regard to the religious-education in the church schools, teaching curriculum and disciplinary code for the teachers;

3) to supervise that the directives for school regulations and teaching curriculum are correctly carried out and that the prescribed religious-cultural school text books are widely used;

4) to choose Diocesan religious-educational supervisors, if necessary, through whom supervision is exercised over all religious-educational institutions in the Diocese;

5) to receive reports from the said supervisors and formulate necessary decisions on same;

6) to receive an annual report from all its committees covering their work and to prepare an annual report from same of the entire work within the diocese and to submit it to the Diocesan Assembly;

7) to decide the organization and development of religious-educational schools for religious-cultural education and beneficial institutions in the Diocese.

## I. DIOCESAN RELIGIOUS-EDUCATIONAL COMMITTEE-SECTION

Article 38

In the jurisdiction of the activity of this committee-section, aside from the religious-educational activity, it should also decide:

1) grievances against decisions of the bodies of church-school congregations in matters of strictly educational and school character; to approve their decisions, i.e. to disapprove them whenever this Constitution proves cause for same;

2) to decide disputes arising between parish priests and church-school congregations and its organs insofar as same do not concern spiritual matters;

3) to prepare recommendations for the Diocesan Council for directives, orders and regulations which pertain to the official activity of the lower organs of the Diocesan authorities and which relate to matters of school and education;

4) to submit to the Diocesan Council for approval, i.e. decision, its reports, findings and financial statements;

5) to execute the decisions and orders of the Diocesan Council;

6) to examine, approve and confirm the rules and decisions of the congregation insofar as it is within the scope of the Constitution;

7) to direct and send representatives for the purpose of investigating various improprieties of lesser bodies in church-parochial schools and to take adequate measures to eliminate various faults and insufficiences in educational and school activities.

Article 39

In administrative and controlling matters of religious schools for religious education, this committee-section is authorized to:

1) approve decisions made by church-school congregations to erect new schools;

2) to endeavor that school buildings be built in accordance with regulations, that they be furnished

with the best of teaching materials and that only qualified teachers be placed in same;

3) to control that church-school congregations authorities fulfill their obligations punctually, submit their reports to the Diocesan Council regularly, statistical data and requests;

4) to confirm the election of teachers selected from church-school congregations and to issue to them their confirmations;

5) to judge in the disciplinary matters of teaching personnel in accordance with the disciplinary rules which the Diocesan Council will present;

6) to arbitrate and decide on differences between teacher, clergy and school-church congregations and their bodies insofar as they touch upon school and teaching regulations;

7) to compile an annual report of the status of all its external and internal religious-educational institutions in the Diocese, which report will be published in the Diocese paper) and to submit same together with the propositions to the Diocesan Council;

8) to effect the decisions of the Diocesan Council insofar as they concern religious-educational activity;

9) to place substitutes in teaching vacancies until valid decision is final;

10) to maintain a list of all religious-educational institutions and teaching personnel in same;

11) to assume responsibility that the supervision of all religious-educational institutions be carried out.

## II. FINANCIAL-EXECUTIVE COMMITTEE-SECTION

### Article 40

Of the members of this committee-section, the Diocesan Bishop in agreement with the Diocesan Council names

to same, the Diocesan Treasurer and assistant treasurer. The treasurer of the Diocesan Council must be under bond, said bond being twice the amount of cash at the disposal of the Diocesan funds.

Article 41

Also within the jurisdiction of the Financial-Executive Committee:

1) to maintain that regular inventories are kept of all real and personal property of the Diocese, church-school congregations, monasteries, funds (beneficiencies) which can be included in same;

2) to control the status, handling and usage of those funds (beneficiencies) and property which are directly supervised by the church-school congregations and monasteries;

3) to examine the submitted final financial statements for the past year and to approve church-school congregation and monastery budgets for the subsequent year;

4) to handle directly and under the supervision of the Diocesan authorities, the funds (beneficiencies) which serve the church-religious educational and humanitarian aims of the entire Diocese and monastery in the Diocese;

5) to supervise over all Diocese property and beneficiencies;

6) to check and keep in its file, one copy of the property inventory of the church-school congregations, monasteries and Diocese.

## DIOCESAN ECCLESIASTICAL COURT

Article 42

The Diocesan Ecclesiastical Court is comprised of the Bishop as president, four regular and three alternate members.

The regular members and alternate members of the Diocesan Ecclesiastical Court are appointed and relieved of duty by the Bishop.

Article 43

Members of the Diocesan Ecclesiastical Court may be clergy of both orders but they cannot be related amongst themselves or with the Bishop to within four degrees of canonical computation, be it blood relationship or through marriage.

Article 44

The Diocesan Ecclesiastical Court maintains its own legal counsel when necessary, who is at the same time the defender of marital unions and attorney of the Diocesan Council, namely the Diocese. He must have legal training (bar admission) to practice in the country-state, and he is appointed by the Bishop of the Diocese in accord with the Diocesan Council.

Article 45

The members of the Diocesan Ecclesiastical Court, regular or alternates, as well as its clerks (including the attorney) swear an oath to the Diocesan Bishop which is as follows:

> "I (N.N), swear to Almighty and All-Knowing God, that I will fulfill all duties and activities entrusted to me carefully and conscientiously without any objectives, that I will, before the enaction of any decision, most zealously uphold all the laws and canons which relate to the subjects of the office entrusted me and that I shall guard official secrets most honorably. So help me God!"

This oath must be personally signed by each member and submitted to the Diocesan Bishop.

Article 46

The president of the Diocesan Ecclesiastical Court is the Diocesan Bishop; should he not be available, he trans-

fers the administrative work to his representative in accordance with Article 13 of this Constitution.

Article 47

The meetings of the Diocesan Ecclesiastical Court are held as required at the invitation of the Diocesan Bishop. All regular members must be invited to the meetings as well as the required member of alternate members and the latter, if possible, should be from the immediate vicinity of the Diocese seat.

Article 48

The members of the Diocesan Ecclesiastical Court are not authorized to meet at meetings of the Ecclesiastical Court without the knowledge of the Diocesan Bishop or his appointed substitute.

Article 49

The Diocesan Ecclesiastical Court may always make valid decisions at its meetings, if two-thirds of its membership is present.

Article 50

Meetings of the Diocesan Ecclesiastical Court are not public. If a case involves one of the members or his family or relatives to within four degrees of relationship, he must leave the meeting until the case is settled.

Article 51

A motion, approved by all members or their absolute majority becomes valid and should immediately be pronounced as such when the Bishop approves it.

If the vote is tied, the motion endorsed by the Diocesan Bishop, i.e. his representative, becomes the valid decision.

If the vote is entirely deadlocked, the Bishop calls a new hearing at the next nearest meeting.

## Article 52

At each meeting of the Diocesan Ecclesiastical Court, the Diocesan secretary (Bishop's secretary) take minutes which include the names of the members present as well as those absent and their names, comment to the minutes of the previous meeting, announcements and correspondence which come within the jurisdiction of the Diocesan Ecclesiastical Court, subjects discussed and voted upon, results of vote and final decisions with notations indicating how all present voted.

The minutes must be signed by all members present and the excerpts from the minutes only by the secretary.

## Article 53

Decisions made by the Diocesan Bishop alone or together with the Diocesan Ecclesiastical Court, have the validity and power of decrees of Ecclesiastical Courts in the first instance. The highest and final instance is the Holy Bishop's Synod.

The Diocesan Ecclesiastical Court decides matters of divorce in the first and final instance, except in the cases of marriage annulments or on appeals of a decision of the Diocesan Ecclesiastical Court in which case the Holy Bishop's Synod is the final instance.

## Article 54

All decisions pertaining to the unfrocking of priests or presbyter-monastics are made not only by reason of complaint but also by official duty, to the Holy Bishop's Synod for consideration and final decision.

## Article 55

The jurisdiction of the Diocesan Ecclesiastical Court is:

1) to see that the teaching of the faith is preserved intact and that the church rituals are maintained in their entirety;

2) to see that priests and presbyter-monastics perform their duties both in and out of the church and that the religious-moral life of the clerics and people coincide with church regulations;

3) to provide instructions for religious education in general, to be informed through contact with its bodies on the religious-moral situation of the people and Serbian Eastern Orthodox children in all schools;

4) to arbitrate and decide upon differences arising between archpresbyters, priests and missionaries, insofar as they relate to their spiritual service and official relations;

5) to judge in all disciplinary matters which relate to church discipline and order of the clerics and people and also in the matters relating to the performance of the Holy Sacraments and marital matters;

6) to, if necessary, call for plenishment of vacant parishes;

7) to engage, in accordance with this Constitution, in the organization of new, dissolvement of old or other re-orientated existing church-school congregations, parishes, archpresbyterates, monasteries, and in the designation of their headquarters;

8) to formulate directives for the official activities of district archpresbyterates insofar as the directives relate to their spiritual stewardship and to see that the church-school congregations, parishes fulfill their obligations in matters designated within their jurisdiction;

9) to assume responsibility that all new churches are built in accordance with Orthodox rites, that they are consecrated according to regulations, that they are furnished with service books, materials, and essentials and that church cemeteries are consecrated and properly fenced;

10) to maintain that correct inventories are kept listing church vessels; orders a list of all churches, parochial and monastic clergy and the number of christian souls and homes and that all are entered in special books;

11) to see that official church records and generally all that is necessary for parish life (monastery) as well as prescribed books and minutes, are kept in order and according to regulations;

12) to submit an annual report of its work to its Diocesan Bishop who will publish it in the official organ each year.

### Article 56

Court procedures and order of business of the Ecclesiastical Court will be prepared by the Ecclesiastical Court itself with the approval of the Holy Bishop's Assembly of the Serbian Church.

If the Bishop should disagree with the decision of the Diocesan Ecclesiastical Court, as well as with the decision of some Diocesan committee or Diocesan Council, the matter in question will be sent to the Holy Bishop's Synod of the Serbian Church for final Decision.

## Fourth Part

## LOWER DIOCESAN ORGANS

### I. DISTRICT ARCHPRESBYTERS AND ARCHPRESBYTERATES

### Article 57

District archpresbyterates are a group of more church-school congregation-parishes which are under the spiritual supervision of one and the same district archpresbyter.

### Article 58

Each Serbian Orthodox School-Church congregation-Parish which exists or which is to be organized in this

country, must be in canonical unity with one of the existing district archpresbyterates.

Article 59

The present district archpresbyterates, their headquarters and their boundaries remain intact for the present but in the future the changes in this respect will be made only after a hearing of the Diocesan Council and the Diocesan Ecclesiastical Court, the interested clergy and people, the decision of which will be based solely upon the interests of the church and church welfare.

Article 60

Accordingly, there exists and shall exist until further decision, three district archpresbyterates: eastern, central, and western.

Article 61

District archpresbyters are spiritual heads of one archpresbyterate, appointed permanently in a valid manner, and furthermore, as a confident of the Diocesan Bishop and Diocesan Authorities is authorized in their behalf and at their request to effect all spiritual supervision over clergy, people and all church and religious-educational institutions of his district and in this respect is elevated in rank to archpresbyter and appointed.

Article 62

The vacated position of an archpresbyter must be filled within six months after said vacancy occurs.

A temporary substitute is appointed by the Bishop in agreement with the Diocesan Ecclesiastical Court.

To fill the vacancy of the position of an archpresbyter, the Diocesan Ecclesiastical Court candidates three clergymen, pastors of this Diocese who have passed the prescribed residual examinations insofar as they were not

exempt from same and who have as clergy fulfilled parish duties and from amongst whom the Diocesan Bishop will name a permanent archpresbyter.

Article 63

The church-jurisdictional position of the district archpresbyters includes the following rights and obligations, namely:

1) he is a mediator between the Diocesan Ecclesiastical Court and the district parish offices and in general all the territorial clergy and people: in exclusive spiritual matters and as such is obligated to announce the orders, decisions and rules of the Diocesan Ecclesiastical Court to the parish offices as well as to submit petitions, grievances and in general all requests of the above mentioned to the Diocesan Ecclesiastical Court with all his remarks, reports and eventual propositions;

2) he is the controlling organ of the Diocesan administration in all its activities of the clergy and people, parochial offices and church-school congregations in spiritual and administrative matters, and all church and religious-educational institutions of his district; consequently, his duty is to make annual canonical visitations in his district in accordance with the rules of this Constitution and instructions of his Diocesan Bishop and competent Diocesan authorities and to submit a report on each occasion to the Diocesan administration;

3) he is the investigating organ of the Diocesan administration in all church corrective and disciplinary matters as well as in the executive matters of his district clergy, teachers and faithful and church-school congregations and their organs and the parochial offices insofar as the Diocesan Bishop and competent Diocesan authorities would not entrust the same duties to another as its special representative;

4) he is the executive organ of the Diocesan administration and, therefore, it is his duty to execute orders, decisions, rules and decrees of the Diocesan administration in his district, i.e. all responsibility for same to be fulfilled by all who are bound to do same.

### Article 64

In order that district archpresbyters might correctly fulfill these specific duties of their office, the Diocesan Bishop together with the Diocesan Ecclesiastical Court and Diocesan Council will compile specific instructions and publicize same for the knowledge and acceptance to all the clergy, school-church congregations and parishes.

### Article 65

District archpresbyters maintain separate offices and have a special archpresbyterial seal with lettering reading: "Serbian Orthodox Archpresbyterate Office N.N." encircled and the image of St. Sava in the middle.

### Article 66

The district archpresbyters in their official capacity are under the supervision of the Diocesan authorities and they are duty-bound to submit in all matters without exception, to the prescribed laws and directives.

## Fifth Part
## CHURCH SCHOOL CONGREGATIONS

### Article 67

A Serbian Orthodox Church-School Congregation is a community of Serbs who profess the Orthodox faith and live in one or more localities which are bound together and which comprise geographic and administrative unity according to the laws of this country.

## Article 68

Each Church-School Congregation is considered an integral part of the Serbian Orthodox Diocese in the Northern United States of America and Canada and as such is subject to all the statutes of this Constitution church canons and other regulations, rules and orders of the Diocesan authorities headed by the Diocesan Bishop.

## Article 69

The aim and purpose of the Church-School Congregation is to uphold, maintain and promote the church, school and all institutions which benefit Serbianism and Orthodoxy and to work towards the promotion amongst the members of same, fraternal love and unity and useful citizens of this country, mutually helping one another in the moral and spiritual development of the fulfillment of the purposes of the Serbian Holy Orthodox Church.

## Article 70

Members of the congregation are only those Serbs who have voluntarily assumed upon themselves the duties and burdens prescribed by the church-school by-laws and have thereby achieved the right to actively participate in the work of the Church-School Congregation.

## Article 71

Any person who desires to become a member of the congregation reports to the congregation board which either accepts or rejects him by a majority vote. Persons not admitted to membership or when they are expelled from same, are entitled to grievance to the Diocesan Council within thirty days from the day the decision of the Church-School Board was submitted unto him. The decision of the Diocesan Council is final and obligatory for both sides on this grievance.

### Article 72

Persons not abiding with the statutes of the church-school by-laws are considered only as parishioners, i.e. subjects of the church and do not enjoy those rights which pertain only to the members in accordance with the by-laws of the Church-School-Congregation.

### Article 73

The following cannot be members of a Church-School Congregation:

1) persons under eighteen years of age;

2) persons who are proven to have scandalized others by their immoral conduct and life;

3) persons who can be proven to work against the church, Diocese and Orthodoxy;

4) those, who openly admit and who can be proven to be anarchists, communists, nihilists and bigamists.

### Article 74

Each new member of the Church-School Congregation must take an oath that he will be obedient to all the statutes prescribed by the Church-School by-laws, Constitution of this Diocese and the orders of the Diocesan authorities.

## CONDITIONS FOR THE ORGANIZATION OF CHURCH-SCHOOL CONGREGATIONS

### Article 75

The following conditions are essential in the organization of a Church-School Congregation in one locality:

1) Petition to the Diocesan Bishop, signed by all who wish to organize a church-school congregation in which they obligate themselves to support same both materially and morally;

2) Proposal of the church-school by-laws, which must be composed in accordance with this Constitution and approval by the Diocesan authorities;

3) Petition for the establishment of a necessary fund to purchase land for the building of a school and church on same, and

4) submission of estimate and plans for the building of the church and school.

## CONSTITUENTS

### Article 76

The Church-School Congregations are governed by these organs:

1) Assembly of Church-School Congregations;

2) Executive Board;

3) Controlling Board;

4) Priest-rector;

5) Tutori (wardens) of the church.

### Article 77

The assembly of the Church-School Congregation is comprised of all members in good standing.

### Article 78

Those persons, who on the day of the assembly become members, do not have the right to vote at said assembly.

### Article 79

The regular annual assembly of the Church-School Congregation is held annually on the day designated by the By-laws of the Church-School Congregation. The election of the new board must be submitted to the Diocesan Bishop, i.e. to the Diocesan Council within fifteen days of the date of the assembly for the Diocesan statistical records.

## Article 80

The agenda for the annual assembly is set forth by the Executive Board of the Church-School Congregation and must be strictly upheld by the presidium of the assembly. In the event that certain unforeseen questions and proposal should arise in the agenda, the president of the assembly can incorporate them only under the item "questions and proposals" and discuss them as such and bring forth decisions concerning them.

## Article 81

The Executive Board is obliged to set the day of the calling of the assembly one month in advance and if possible, publicly announce the agenda.

## Article 82

The president of the Executive Board opens the assembly and calls upon the members present to elect the presidium as follows: president, vice-president, secretary and two members to verify the minutes.

## Article 83

On opening the assembly and the election of the assembly presidium, the procedure follows in accordance with the agenda. Upon submitting the reports of the activities of the Executive and Controlling Boards and the acceptance of these reports, and the same Boards are relieved of their duties, the election of a new board is conducted as well as all other items designated in the agenda.

## Article 84

Immediately following the election of new officers of the congregation they are obliged before continuing with the agenda, to take an oath before the priest and in the presence of the entire assembly, that they will perform their duties conscientiously and honestly, always keeping

in mind first the interests of the congregation and their Diocese.

Article 85

Included within the jurisdiction of the activities of the assembly are:

1) election of the presidium of the assembly;

2) submission of the reports of the activities of the retiring boards;

3) release of the old boards;

4) election of the new boards;

5) all matters which do not pertain to the jurisdiction of the activities of the church-school board;

6) the question of salaries and income of the priest and teachers;

7) questions of church-school economy;

8) questions and proposals.

Article 86

All misunderstandings and disagreements which might arise in the course of the year between the priest and teachers on one side and the Board of the Church-School Congregation on the other side, must be submitted for consideration to the Diocesan Council. The Diocesan Council through its official Diocesan organs will investigate and study the matter and submit its decision to the Board. The decision of the Diocesan Council is final.

Article 87

In the event that some more important questions should arise during the course of the church-school year which the church-school board is not authorized to decide and it is evident that its decision cannot be postponed until the regular annual assembly, the Board of the church-

school congregation will call a special assembly which can decide only upon the matter for which it was convened.

Article 88

At the demand of one-third of the members of the Church-School Congregation, the Board is obliged also to call a special assembly as well as if same is demanded by the Diocesan authorities.

Article 89

All decisions of the regular and special assemblies are made by the relative majority of members present. In the event the vote is tied, the vote of the president decides.

Article 90

Any member who abuses his privileges as a member of the Congregation by creating disorder and obstructing the procedure of the assembly, can be barred from the meeting by the presiding officers at the assembly.

Article 91

The assembly may be opened and validly render decisions provided a relative majority of its members in good standing are present.

Article 92

If at the first call to the assembly a relative majority of members in good standing fail to be present, a new assembly shall be called within fourteen days which may render valid decisions if more than one-third of the members in good standing are present.

Article 93

If at this second call the required number of members fail to be present (more than one-third) the minutes on same are composed and signed by the president, priest and

all present members and are then submitted to the Diocesan Council which will bring a decision on further procedures.

Article 94

Should the assembly of the Church-School Congregation over-step the boundaries of the jurisdiction and intentionally prevent the execution of the directives of the Diocesan authorities, the Diocesan authorities are empowered to annul such decisions and to entrust the governing of the said Church-School Congregation further to the retired board and only then issue permission to call a new assembly when the Diocesan authorities receive sufficient evidence and guarantee from the membership that that assembly will be conducted in peace and in the manner prescribed by the Diocesan Constitution and the church-school by-laws.

## EXECUTIVE BOARD

Article 95

At the head of the Church-School Congregation is the congregation administration which is comprised of the Executive and Controlling Boards.

Article 96

The Executive Board consists of: president, vice-president, secretary, treasurer, financial secretary, two tutors (wardens) and the necessary number of committeemen.

Article 97

The Executive Board is elected by the regular congregation assembly according to the prescribed statutes for a period of one year.

Article 98

The priest is a member of the Executive Board by virtue of his position.

Article 99

The regular meetings of the Executive Board are held once a month and special meetings whenever the need arises.

Article 100

The meeting is called by the president who decides and composes the agenda. The president is compelled to call a meeting at the demand of one-third of the members of the executive board.

The meeting is opened and closed with prayers read by the parish priest.

Article 101

The decisions of the Executive Board are valid when all members are duly called and when the relative majority is present (one over one-half) of its members. In the event that at the first calling not more than half of the members are present, the meeting is called again within seven days when one-third of the members can render valid decisions. In the event that this time not even one-third of the members are present, the president is obliged to summon a special assembly within fourteen days at which he must bring up the question of the trust to the Executive Board.

The Executive Board is obliged in its entire work and in its decisions to strictly uphold the statutes of this Constitution and By-Laws of its Church-School Congregation as well as all the directives of the Diocesan authorities.

Jurisdiction of the Executive Board is:

1) to decide the date and place of the calling of the Church-School Assembly;

2) to examine the roster of congregational membership;

3) to prepare proposals for the Church-School Assembly dealing with all matters which fall within its jurisdiction of activities;

4) to execute the decisions of the Assembly and the directives of the Diocesan authorities;

5) to inventory all real estate and financial funds of the congregation in two copies, one of which is sent to the Diocesan authorities;

6) to govern and handle with the entire real estate and financial funds of the congregation and to care for its maintenance;

7) to satisfy all the needs of the congregation, church, school, and etc. relating to this;

8) to determine the means of acquiring funds for the building and repair of the church, school, parish home, and other useful buildings; to submit proposals for and in that respect together with plans, building estimates and expenses to the Church-School Assembly for approval.

9) to propose to the assembly the manner of paying the priest, teachers and other personnel and to see that the same receive the prescribed salaries on time and in the prescribed manner;

10) to decide as to whether certain demands of the congregation shall be rejected as impossible to achieve; whether a law suit shall be started, continued, abandoned or an agreement with the opponent reached; whether certain contracts in the name of the congregation should be concluded, continued, broken or rejected, and whether anything should be purchased from congregational funds;

11) to name an attorney for the Church-School congregation in case of law suits;

12) to take care of the congregation library, organization lecture socials and entertainment;

13) to assist the priest and teachers in the religious and moral education of the people in order

that bad, morally and materially harmful habits and customs be eradicated.

14) to submit recommendations pertaining to the Orthodox Church and school; to preserve and defend the honor and dignity of the Church and Church-School Congregation;

15) to awaken and maintain in the colony love, zeal and sacrifice toward the Serbian Orthodox Church and School;

16) to represent the interests of the church and school through the president in all her external relations with outside individuals and authorities;

17) to recommend to the Board, a plenishment for teachers and priest with the approval of the Diocesan authorities;

18) to inspect the congregational school buildings as often as is necessary to assure of the exterior and interior conditions, orderliness, cleaniness; to take care of the health conditions of the school children, that they be well-behaved both in and out of school;

19) to endeavor that the teaching personnel performs its duties and to aid them in all their duties especially in enforcing proper discipline among the school children;

20) to propose that the Board decide on dismissal of children due to disorderliness;

21) to take care that the children be trained in church music and educated in the spirit of the church and Orthodox faith and in Serbian nationalism;

22) to attend school examinations and celebrations and that good students should be awarded for their achieved success, that the school is well supplied with the necessities and to care for the material needs of the school and education.

## PRESIDENT OF THE CONGREGATION

### Article 102

The president of the congregation is its lawful representative and substitute before the authorities, both civil and ecclesiastical. He receives and opens congregation correspondence, calls committee meetings, opens and closes them, maintains order and peace at same; proposes matters for discussion, brings them to a vote and announces results. He takes care that at all meetings during discussion, the agenda is strictly upheld. The president has the right to admonish and if necessary, to refuse the floor and to reproach any speaker who digresses from the subject discussed or who speaks on matters irrelevant to the agenda, who does not conduct himself decently, insults established authorities or persons. In cases of disturbance or disorder he shall recess the meeting and if peace and order is not restored after that, he shall adjourn the meeting.

## VICE-PRESIDENT

### Article 103

The vice-president shall substitute for the president in all matters should the latter be unable to perform his presidential duties. In the event that the president is absent and cannot preside at a meeting which he called and he has not previously advised the vice-president of same, the vice-president is authorized to preside over the meeting without his consent.

## SECRETARY

### Article 104

It is the duty of the secretary to keep the minutes of the board meetings and to conduct all correspondence of the congregation which he signs together with the president. He keeps a record of the activities, preserves the files and issues membership books.

## TREASURER

### Article 105

The treasurer, tutors (wardens) and the financial secretary receive according to the inventory, all the real estate and financial property of the congregation and they handle same in accordance with instructions and decisions of the Executive Board and Diocesan authorities and in accordance with the laws of the Diocesan Constitution and the By-Laws of the Church-School. The treasurer is obliged to keep a record of all the income and expenditures of the congregation throughout the entire year. He receives money from the tutors (wardens) and other persons and deposits same in the bank; pays the salaries of the congregation's personnel and all other congregation disbursements. The treasurer, financial secretary and tutors (wardens) submit a report each six months regarding the status of the treasury and congregational property.

## FINANCIAL SECRETARY

### Article 106

The duty of the financial secretary is to keep a book of the income and expenditures of the congregation, to receive dues and enter same in the membership book and the book of income, and to submit the monies received to the treasurer. He will keep a record of the membership status and is to remind them on payment of dues.

## TUTORS (WARDENS)

### Article 107

The duties of the tutors (wardens) are to be present regularly in church at all church services and ceremonies; to receive money in church from the sale of candles and offerings and other contributions; to exercise care of all necessary items in connection with the church and church rituals. They shall transmit all monies received to the treasurer each Sunday.

## PARISH

### Article 108

The Serbian Orthodox Parish is a union of all Serbs, who profess the Eastern Orthodox Faith, live in the said place and vicinity and have one and the same parochial church and within spiritual boundaries belong to one and the same priest. Only one parish can exist on the territory of the said congregation. Change of this status can only be decided by the Diocesan Council.

### Article 109

Each parish has its parish office; its separate vital statistics books and other prescribed parochial records and books, its own parochial seal with the image of the church patron saint in the middle encircled with the following inscription; "Serbian Orthodox Church in N.N.".

### Article 110

The parish seal is safe-guarded by the parish priest and all official records, correspondence, and documents must be issued with that seal affixed. The congregation seal, however, is handled by the president of the congregation.

## PRIEST-HEAD OF PARISH AND TEACHERS

### Article 111

Candidates for ordination in priestly order can be persons who completed a theology school, of good behavior and who possesses all the qualities prescribed by the canons.

### Article 112

The parish priest is considered as such by regular, lawful and permanent appointment and approval for the assigned parish by the Diocesan Bishop; he is the head of the parish and of the parish church; stands for and is responsible for all the work in same.

Article 113

The parish priest is assigned by the Diocesan Bishop temporarily or is elected as priest by the Church-School Congregation by plenishment and confirmation of the Diocesan Ecclesiastical Court. Temporary parish priests are assigned to those parishes where circumstances demand temporary character as for example the uncertainty that the Church-School Congregation could support a priest permanently or where for some reason, the Church-School Congregation itself is against a permanent priest, or where official Diocesan authorities, for justified reasons, detain the election of a priest.

Article 114

The post of parish priest is vacated by:

1) death of the parish priest;

2) transfer by request, Ecclesiastical Court decrees, or by call of duty;

3) loss of position on the basis of valid sentence of qualified Diocesan authorities; and

4) regular resignation of position.

Article 115

The vacant post of the parish priest is filled as soon as possible from the date of vacancy by the publication of plenishment and confirmation by the Diocesan Bishop. On publication of plenishment, the candidates send their application together with the original certificate of completed theology school and successfully completed theology examinations, i.e. with attached "sindjelija" — the gramata of ordination, to the Diocesan Bishop who examines the qualifications and approves those for election who have the necessary qualifications for same.

Article 116

A priest is elected by the majority vote of the Church-School Congregation and the approved election of the Dioc-

esan Bishop, from among those candidates who within the prescribed time submitted their petitions and certificates.

Article 117

The Church-School Congregation is not authorized to discharge the priest or to bring another in his place without the knowledge or permission of the Diocesan Bishop.

Article 118

The priest cannot resign his parochial duties without the consent of his Diocesan Bishop and the knowledge of his Church-School Congregation. He can leave his parish with the approval of the Diocesan Bishop, only after having given at least a month's notice and after having surrendered the parochial office and church to the congregation in the prescribed manner.

Article 119

A priest is obligated before leaving the parish, to surrender in utmost accuracy to the parish board, the statistical books, all other parish church books and articles which are the sole property of the Church-School congregation and which are in no respect the property of the individual priests.

Article 120

The parish priest in his work is under the direct control of his Diocesan Bishop who performs this control personally through his Diocesan organs. Consequently, he is exclusively responsible for all his actions to his Diocesan Bishop and the Diocesan Ecclesiastical Court.

Article 121

All grievances and accusations by the Church-School Congregation and individuals against the parish priest must be submitted to the Diocesan Bishop for his review and he, according to his own discretion and his designated rights,

decides the matter himself or submits it to the Ecclesiastical Court for further action.

Article 122

The priest is obliged to submit to his Diocesan Bishop and to the Diocesan Ecclesiatical Court all controversial issues with the Church-School Congregation and to obey their decisions.

1) in the event of a disagreement between the parish priest and the church congregation, the issue is decided by the Diocesan Council. Should investigation prove that the priest is guilty, he is to be transferred from the parish or punished by the Ecclesiastical Court. If found, however, that the Church Congregation is at fault, the Diocesan Council must decide that the priest remain in the parish. However, if the Church Congregation does not submit to the decision of the Diocesan Council, the parish priest is to be transferred and the Church Congregation, because of its guilt remains without a priest until such time that it agrees to accept the same priest;

2) in the event of disagreement between the priest and teacher or between the priest and the congregation; or between the teacher and the congregation; or between the congregation and the priest; or between the congregation and the teacher; or between one or more (groups) full-pledged members of the congregation and board, they, each party composes its Grievance and signed by at least 10-15 full-pledged members of the congregation submits same at the first following meeting of the Executive Board of the congregation where both grievances are alone read, are then submitted to the president of the congregation who in turn immediately sends them to the Diocesan Council. The registration of mail receipt must be pasted onto the minutes in which a record is made that the grievances were read and sent to the Diocesan Council for decision.

## Article 123

The parish priest must not perform any rituals in another parish without the consent of the priest concerned or without orders from the Diocesan Bishop in exceptional cases.

## Article 124

The Church-School Congregation, however, must not permit any of its members or parishioners to willfully bring in a priest from outside the parish to perform priestly services. In the event that such a member or parishioner transgresses this regulation, the congregation is obliged to take all possible measures to punish him for violation of order and discipline.

## Article 125

The parish priest may take leave only with permission of the Church-School Congregation and Diocesan Bishop. In the case of a one week leave, he finds a substitute for himself, preferably a Serbian priest. In case of a longer leave, he requests a substitute from the Bishop. This question, further, the priest is obliged to regulate mutually with his substitute in accordance with the By-Laws of their respective Church-School Congregations.

## Article 126

The duties of the parish priest are:

1) to perform all the Holy Sacraments and rituals in the church as well as in the parish and always in strict accord with regulations and canons of our Orthodox Church and its rules;

2) to teach his parishioners and youngsters of both sexes, at all opportune times, the principals of faith and christian morals;

3) to preach on every holiday and if possible to speak upon request at public gatherings and socials;

4) to keep church records of births, marriages and deaths and other prescribed parish books in ac-

cordance with the instructions of authorized Diocesan authorities;

5) to issue excerpts from these books in official form and with the affixed parish seal, which as such have the validity of official documents;

6) to endeavor that parishioners, if there is no church or school in the parish, erect same within their financial limitations;

7) to endeavor that the church and school interior, church utensils and the area around the church and school are kept clean and orderly.

Article 127

The duties and the functions of the priest include both the religious-moral as well as the educational spheres, as long as the priest in America by the power of circumstances, is compelled to perform both his priestly and instructive duties simultaneously.

Article 128

As a teacher, the priest is obliged to conduct his parochial school, if possible twice a week and to teach the children catechism, reading, writing, geography, history and church singing.

Article 129

In those congregations having more than 150 homes, the priest is not obliged to conduct complete teaching duties but only to teach religion and church singing to children two hours weekly. Such a congregation is required to obtain its own regular teacher.

Article 130

Teachers are elected by the Church-School Congregations by plenishment, the same as priests and the election is approved by the Diocesan Council. As far as a vacancy

of this post is concerned, substitution, vacation or sick-leave, the same regulations apply as in the case of priests.

### Article 131

A Candidate for teacher can be a person who completed a teaching or other recognized school, is of good conduct, Serbian of Orthodox Faith and has all the qualifications of an educated worker and pedagogue.

### Article 132

The relationship between the priest and teacher must be such as to serve as an example to all members of the Church-School Congregation and parishioners.

### Article 133

All misunderstandings and disagreements which could arise between the priest and the teacher and which they themselves cannot solve, are submitted to the Diocesan Bishop, i.e. to the Diocesan Council for consideration and decision.

### Article 134

The teachers will follow the teaching curriculum and use the textbooks and other instructive methods which the Diocesan Council will prescribe by special rule.

### Article 135

The school work of the priest and the teacher is subject solely to the supervision of the educational supervisor or special representative from the Diocese but never by the Church-School Congregation which is unauthorized to do so.

### Article 136

The Church-School Congregation is obliged to protect the honor and the dignity of its priest and teachers and accordingly must not demand anything in their service or

work which would belittle and lower their dignity and authority before our people, the Americans and other outsiders.

Article 137

The priest is not obliged to walk at funeral processions and parades because it is unpractical as well as dishonorable in the eyes of the Americans and others.

Article 138

The priest aside from his regular salary agreed upon with the Church-School Congregation, is entitled to the following sources of income:

1) from each excerpt from the record book of births, marriages, and deaths, the sum of $2.00;

2) from the blessing of water and cutting of the "Slavski Kolac" the sum of $2.00;

3) for announcement of marriage bans, the sum of $1.00 for each announcement;

4) for requested prayers, the sum of $1.00;

5) for the blessing of new homes, the sum of $5.00;

6) for requiem (parastos) services, the sum of $2.50 from members and $5.00 from non-members;

7) voluntary offerings from the blessing of homes during the Theophany season.

Article 139

The priest is obliged to conduct without compensation, the following services and obligations:

1) regular church rituals and services;

2) processions with evening services, carrying of the Cross and the blessing of the Holy water;

3) special general rituals and services:

a) on general national festive days;

b) general thanksgiving services and prayers at the beginning and close of the school year;

c) general thanksgiving services and prayers which are ordered by the higher spiritual authorities, according to need (in times of epidemics or in any other general necessity);

d) memorial service to deserving deceaseds for the Fatherland;

e) twice annually (memorial service) for all deceased as prescribed by the church;

f) blessing of the water on the Day of the Holy Cross and Theophany in the church or in the river;

g) myrrh annointment and confession.

## Article 140

Fees for the main parochial rites: baptism, marriages and funerals are determined by the Church-School Congregation according to the By-Laws of the congregation and the circumstances in the parish. What part, if any, of this fee will go to the priest will be regulated by each individual church congregation in agreement with its priest.

## Article 141

The regular monthly salary of the priest and teacher is determined by the Church-School Congregation for each year in advance in agreement with the Diocesan religious-educational section.

## Article 142

The Church-School Congregation is obliged to place at the priest's disposal, a parish home which is furnished with heat, electricity and telephone. In the event that the congregation does not have a parish home, it assigns to the priest an agreed allowance in lieu of the parish home.

Article 143

The Church-School Congregation cannot decrease the salary of the priest and teacher without the consent of the Diocesan Bishop and Diocesan Council.

Article 144

In case of the illness of the priest or teacher and the physician forbids him to leave his sick-bed, the Church-School Congregation is obliged to pay his wages for the month in which case the Diocesan Bishop names a substitute. The priest substitutes gives all the additional income from the rites and sacraments to the congregation of the ill priest. If the illness is prolonged for more than one month, the congregation stops his wages and informs the Diocesan Bishop of same, i.e. The Diocesan Council, who in turn decide the question of replacing the ill priest.

In the event of the death of the priest, i.e. teacher, the Church-School Congregation cannot deprive his family from remaining in the parish home with furnished utilities for a period of one month.

SIXTH PART

PROPERTY AND FUNDS

A) I DIOCESAN PROPERTY

Article 146

Under the heading of Diocesan property is included that property which is owned by the Diocese and under Congregational property is included that property owned by the Church-School Congregation.

Article 147

The property of the Church-School Congregation in individual colonies belongs exclusively to the said congregation without Diocesan rights to same. Only in the event

of request by the membership of said congregation, does the Diocese have the right to control same.

Article 148

Exact inventories must exist for all of the above mentioned property, composed by organs authorized to supervise them, one copy of which should be sent to the Diocesan Council for safe-keeping. The inventories must be corrected and in accordance with the actual status of the property brought up-to-date at the end of each year.

Article 149

The above mentioned property and its assets are to serve exclusively for the purpose designated by the statutes of this Constitution and cannot be used for any other purpose.

Article 150

Real estate must be registered with the land registrar; the diocesan in the name of the Diocese and the congregational in the name of the Church-School Congregation who are the owners.

Article 151

Houses, churches and other buildings must be insured against fire damage.

Article 152

The authorities handling the above mentioned properties must always maintain same in good and usable condition and are responsible for any damage which might occur at their fault, carelessness or negligence and will be responsible by law and in accordance with the decision of the Diocesan Council.

## 2. CHURCH-SCHOOL CONGREGATION PROPERTY

### Article 153

The church-school Congregation property is all that property without exception acquired by individual congregations with their material means. The Church-School Property serves the church, school, educational and humanitarian purposes of said congregation and particularly in the erection, maintenance and decoration of the local churches, for supplying same with the essential church items, books, icons, vestments, and other items required by the church for the erection and maintenance of parish homes, churches, and for the salaries for local priests, teachers and other church and school personnel according to the purposes for which the said properties are dedicated.

### Article 154

Direct supervision of the Church-School Congregation on property is made by the Church-School Congregation, and they serve for the church, school and religious-educational aims of the individual congregations and higher control is made by the Diocesan Council, i.e. Financial Executive Board.

## B) I DIOCESAN FUND

### Article 155

Under the heading of Diocesan Fund are all the funds and assets which the Serbian people of the entire Diocese, individually or collectively through their church-school congregations and other various societies and organizations should establish, increase and dedicate to the mutual necessities of its church and school for the religious and educational aims of the entire Diocese. All the income from the Diocesan property and various Diocesan institutions belong to this fund.

The Diocesan funds are supervised by the Diocesan Council through its Financial Board-Section which should

be constituted at the first regular meeting of the Diocesan Council.

Special church-school funds dedicated exclusively for the school and educational necessities, are supervised by the Diocesan Religious-Educational Board with a separate treasury.

Article 156

All real estate and personal property of the St. Sava Monastery in Libertyville as well as the other Serbian Monasteries should they be organized, is supervised by the monastery's administration under the direct control of the Diocesan Bishop.

Article 157

The Diocesan Council is obliged to set up a budget at its first meeting which would stand to support the entire Diocese and to appropriate sufficient means to realize same.

Article 158

The income of the Diocesan fund will be obtained primarily through assessments and voluntary donations of all the clergy, Serbian Orthodox Congregations and organizations.

Article 159

The Church-School Congregations are obligated morally to assume their monthly share of the regular maintenance of the Diocese, which will be assessed in accordance with the population and possibilities of said congregation, and they will, on the other hand, in accordance with their circumstances offer the best possible manner to meet with their obligations.

Article 160

The Diocesan Council shall appeal to all Serbian benefactors and benevolent federations, societies and or-

ganizations, to designate a regular monthly contribution per member to the Diocesan fund for the maintenance of the Diocese.

Article 161

The Diocesan Council will designate specific persons periodically who will be authorized to collect voluntarily donations in designated territories for the Diocesan fund.

The income from all celebrations at the monastery in Libertyville belong to the monastery in Libertyville.

Article 162

The Diocesan Council will endeavor to open, as soon as possible, a Diocese supply store which will provide items for sale such as religious and educational books, candles, incense and all other necessities, all the income from same to be entered into the Diocesan funds. All income from Diocesan economy will be included in the Diocesan fund, when it is sufficiently developed.

## 2. SEPARATE FUNDS AND PLEDGES

Article 163

Under the heading of Separate Funds are understood all those funds which in time private individuals or the Diocesan Council itself could organize and dedicate to the separate religious and educational aims of the Diocese as a whole or for the individual Diocesan institutions and church-school congregations.

Under Pledges are to be understood all private bequests which are entrusted to the Diocese for handling and with special designated purposes.

The Diocesan Council is obliged to prescribe a separate rule for the handling of same at its first meeting following the organization of a separate fund or receipt of a bequest.

All Separate Funds and Bequests serve exclusively for the purposes designated and are not to be used for any other purpose.

If the purpose for which the specific fund or bequest was established is discontinued, The Diocesan Council shall suggest to the Diocesan Assembly that all these funds be used for other religious-educational aims.

All bequests are made by special wills in which detailed aims are outlined as well as the manner and usage of same. The will is to be composed and submitted in triplicate, one copy of which remains with the benefactor, i.e. his inheritors; one copy with the organ handling the bequest and one with the Diocesan Council.

The Diocesan Council is obliged to publicize monthly statements of the status of not only the general Diocesan Fund, but the status of the Separate Funds and Bequests as well.

# THE CONSTITUTION

# OF THE

# SERBIAN ORTHODOX CHURCH

SECOND EDITION

OF THE

HOLY SYNOD OF BISHOPS

BELGRADE 1957

Translated by: Very Rev. Velimir P. Kovacevich

and

Vladimir Lugonja

# CONTENTS


| | Page |
|---|---|
| I. FUNDAMENTAL REGULATIONS (Article 1-41) | 89 |
| II. THE STRUCTURE OF AUTHORITIES, BODIES, AND ORGANS OF THE SERBIAN ORTHODOX CHURCH (Article 42-213) | 102 |
| 1. The Patriarch (Article 42-45) | 102 |
| 2. The Holy Assembly of Bishops and The Holy Synod of Bishops | |
| a) General Mutual Regulations (Article 56-68) | 108 |
| b) Jurisdiction of the Holy Assembly of Bishops (Article 69) | 112 |
| c) Jurisdiction of the Holy Synod of Bishops (Article 70) | 115 |
| 3. The Supreme Ecclesiastical Court (Article 71-80) | 118 |
| 4. The Patriarchal Council (Article 81-90) | 121 |
| 5. The Patriarchal Executive Committee (Article 91-101) | 125 |
| 6. The Diocesan Bishop (Article 102-114) | 130 |
| 7. The Diocesan Ecclesiastical Court (Article 115-135) | 137 |
| 8. The Diocesan Council (Article 136-143) | 142 |
| 9. The Diocesan Executive Committee (Article 144-158) | 145 |
| 10. The Episcopal District Deputy (Article 159-163) | 151 |
| 11. The Rector (Article 164-178) | 155 |
| 12. The Church-Congregational Council and Church-Congregational Executive Committee | 161 |
| a) Church-Congregational Council (Article 179-193) | 161 |
| b) Church-Congregational Executive Committee (Article 194-202) | 169 |
| c) Mutual regulations for the Church-Congregational Council and the Church-Congregational Executive Committee (Article 203-207) | 172 |
| 13. The Superior and brotherhood of monasteries (Article 208-213) | 175 |
| III. ECCLESIASTICAL OFFENSES AND PUNISHMENTS (Article 214-224) | 178 |
| IV. CHURCH EDUCATION (Article 225-234) | 182 |
| V. CHURCH PROPERTY (Article 235-266) | 184 |
| VI. PROVISIONAL INSTRUCTIONS AND CONCLUDING ORDINANCES (Article 267-269) | 193 |

DECISIONS OF THE HOLY ASSEMBLY OF BISHOPS RELATIVE TO CERTAIN PRESCRIPTIONS OF THIS CONSTITUTION

The Constitution of the Serbian Orthodox Church was for the first time publicly announced in the "Glasnik", the official journal of the Serbian Orthodox Church No. 7-8 of August, (July 19) 1947.

Printing Press
Sava Mikich – Zemun

Syn. No. 1899/Min. 520
12-VI/30-V-1947

# THE CONSTITUTION OF THE SERBIAN ORTHODOX CHURCH

"Since certain rules and regulations of the Constitution of the Serbian Orthodox Church of November 16th, 1931 were rendered powerless because of the changes in relationship of the Serbian Church toward the State, and in view of the heavy consequences of the war and of the conditions which have arisen in the life and work of the Serbian Church the Holy Assembly of Bishops of the Serbian Orthodox Church made changes and amendments in this Constitution, which by reason of necessity are immediately applicable, as of the day of publication in the "Glasnik", the official journal of the Serbian Patriarchate, with the condition that they be presented at the appropriate time to the Patriarchal Council through the Patriarchal Executive Committee."

## CONSTITUTION OF THE SERBIAN ORTHODOX CHURCH

### 1. Fundamental Regulations

#### ARTICLE 1

The Serbian Orthodox Church is one, undivided, and autocephalous. The Church confesses publicly its religious teachings, performs publicly its religious services, and governs and regulates independently all its religious affairs.

Serbian Orthodox Church maintains dogmatic and canonical unity with all other Orthodox Churches.

#### ARTICLE 2

The Serbian Orthodox Church has a rank of a Patriarchate.

## ARTICLE 3

The following is a description of the coat of arms of the Serbian Orthodox Church:

Upon the patriarchal background of purple, it is decorated with a double-bar cross on the right side, and the archipastoral staff on the left, and in the center a shield topped with a bishop's crown; upon the blue upper half of the shield on the right side is the tower of St. Sava in Hilendar, and on the left side the monastery church of the Patriarchate of Ipek, both white in color; upon the lower white is a gold cross in the center with four equal sides, and upon each of the four spaces about the cross is a golden ray emanating from each corner.

## ARTICLE 4

The official language of the Serbian Orthodox Church is Serbian with writing in Cyrillic. In exceptional and justified cases, a deviation from this regulation is allowed with regard to the language for internal use, in which cases The Holy Synod of Bishops makes a special ruling based upon this regulation.

The banner of the Serbian Orthodox Church is tricolor; red-blue-white, with a gold cross and rays.

## ARTICLE 5

The legal persons in the Serbian Orthodox Church are these: Patriarchate, dioceses, church congregations, monasteries, foundations, independent institutions or such funds designated for places of worship.

These legal persons may, in accordance with legal regulations, acquire and hold either personal or real properties, and have all the rights and obligations in that capacity.

## ARTICLE 6

The Serbian Orthodox Church independently governs and freely handles church property, church funds and memorial bequests (foundations), within the limits of this Constitution and state laws.

Church authorities independently decide concerning the acceptance of memorial bequests which are intended for church purposes.

The Serbian Orthodox Church independently exercises control of its incomes and disbursements.

The property of the Serbian Orthodox Church serves only the aims of the Church, nothing can be taken from it in any form nor used for other purposes, except in cases of expropriation foreseen by law.

## ARTICLE 7

The Serbian Orthodox Church is governed on the basis of:

(a) The Holy Scripture and Holy Tradition, according to the teaching of the Holy Orthodox Church;

(b) Rules of the Ecumenical Councils and by them all the rules of the Holy Apostles recognized as such, rules of the regional councils and the rules of the Holy Fathers of the Church;

(c) Rules of the regional councils and synods inasmuch as were adopted by the Serbian Orthodox Church;

(d) Regulations of this Constitution;

(e) Regulations, rules and general rulings of the competent church authorities.

## ARTICLE 8

Organization of the Serbian Orthodox Church is church-hierarchical and church-administrative.

All the church spiritual, disciplinary and legal authority, in accordance with the canons and rules of the Serbian Orthodox Church, belongs exclusively to the hierarchy. This authority is exercised through its hierarchical representatives and organs.

ARTICLE 9

Church offenses and penalties are those which are prescribed by this Constitution according to the canons of the Orthodox Church.

ARTICLE 10

In the Serbian Orthodox Church there are church hierarchical and administrative authorities, bodies and organs:

1. Patriarch, Holy Bishops Council and Holy Synod, High Ecclesiastical Court, Patriarchal Council and Patriarchal Board;
2. Diocesan Bishop, diocesan ecclesiastical court, diocesan council and diocesan executive board;
3. Bishop's vicar;
4. Parish priest;
5. Church congregational council and church congregational executive board;
6. Abbot and the monastery brotherhood.

ARTICLE 11

All ecclesiastical authorities, bodies and organs of the Serbian Orthodox Church have their seals with the Church coat of arms in the center, and inscription encircling it as follows:

1. The Archbishop of Ipek, Metropolitan of Belgrade-Karlovac, and Serbian Patriarch;
2. The Holy Assembly of Bishops of the Serbian Orthodox Church;

3. The Holy Synod of Bishops of the Serbian Orthodox Church;
4. The Supreme Ecclesiastical Court of the Serbian Orthodox Church;
5. The Patriarchal Council of the Serbian Orthodox Church;
6. The Patriarchal Executive Committee of the Serbian Orthodox Church;
7. Orthodox Bishop (Metropolitan) of the Diocese of (N) in (N);
8. The Ecclesiastical Court of the Orthodox Diocese of (N) in (N);
9. The Diocesan Council of the Orthodox Diocese of (N) in (N);
10. The Diocesan Executive Committee of the Orthodox Diocese of (N) in (N);
11. Orthodox episcopal district of (N) in (N);
12. The Serbian Orthodox Parish of (N) in (N);
13. The Serbian Orthodox Church congregation in (N);
14. Serbian Orthodox Monastery in (N);

In case of necessity the titles under points 11, 13 and 14 of this article can be changed. This is decided by the Holy Synod of Bishops upon recommendation of the jurisdictional Bishop.

Dioceses, monasteries and other institutions, which have their historical seals may retain them in further use.

## ARTICLE 12

The Serbian Orthodox Church is episcopal. Its main administrative division is composed of dioceses, both in regard to church hierarchical and church administrative aspect.

## ARTICLE 13

At the head of the Serbian Orthodox Church is the Serbian Patriarch, as its chief ruler. The title of the Patriarch is: The Archbishop of Pec, Metropolitan of Belgrade-Karlovci and the Serbian Patriarch.

At the head of each diocese there is the diocesan bishop as its direct ruler. He is, according to the church canonical regulations, chief representative and guiding leader of all church spiritual life and church order in the diocese and he rules the diocese assisted by his clergy and laymen.

## ARTICLE 14

These are the Dioceses in the Serbian Orthodox Church:

1. Belgrade-Karlovci, Archbishopric with its seat in Belgrade;
2. Diocese of Banat with its seat in Vrsac;
3. Diocese in Banja Luka with its seat in Banja Luka;
4. Diocese of Backa with its seat in Novi Sad;
5. Diocese of Branichevo with its seat in Pozarevac;
6. Diocese of Buglinlja Polim with its seat in Bjelo Polje;
7. Diocese of Gornji Karlovac with its seat in Plaski and Karlovac;
8. Diocese of Dabro-Bosna with its seat in Sarajevo;
9. Diocese of Dalmatia with its seat in Sibenik and Split;
10. Diocese of Zagreb with its seat in Zagreb;
11. Diocese of Zahumlje-Hercegovina with its seat in Mostar;
12. Diocese of Zvornik-Tuzla with its seat in Tuzla.

13. Diocese of Zletovo-Strumica with its seat at Stip;
14. Diocese of Zhicha with its seat at Kraljevo (Zhicha);
15. Diocese of Nish with its seat at Nish;
16. Diocese of Ohrid-Bitolj with its seat at Bitolj;
17. Diocese of Pakratz with its seat at Pakratz;
18. Diocese of Rashko-Prizren with its seat at Prizen;
19. Diocese of Skoplje with its seat at Skoplje;
20. Diocese of Srem with its seat at Sremski-Karlovci;
21. Diocese of Timok with its seat at Zajecar;
22. Diocese of Crna Gora and Primorje with its seat at Cetinje;
23. Diocese of Shabatz and Valjevo with its seat at Shabatz;
24. Diocese of Shumadija with its seat at Kragujevac;

Bishops of Dioceses in: Crna Gora-Primorje, Skoplje, Dabro-Bosna, and Zagreb have by their rank the title of Metropolitanate.

## ARTICLE 15

In addition to already mentioned dioceses in the previous article, under the jurisdiction of the Serbian Orthodox Church in spiritual and hierarchical aspect, also belong the following dioceses outside of the country:

1. The Serbian Orthodox Church in the United States of America and Canada, with its seat in Chicago or in the monastery of St. Sava, at Libertyville, Illinois;
2. Serbian Orthodox Diocese of Budim . . .;
3. Parts of the Vrshatz and Temisvar Diocese outside the borders of Yugoslavia, with its seat in Temisvar;

4. The Czech-Moravian in Orthodox Diocese in Czecho-Slovakia;

5. The Serbian Orthodox Vicariate of Skadar with its seat at Skadar (Skutari);

6. The Serbian Orthodox Churches, Church congregations, and parishes outside the borders of Yugoslavia (Churches in the Diaspora).

Questions of an organizational material, and of other matter which emanate from the former relations with the Diocese of Budim (pt. 2.), and parts of the Diocese of Temisvar (Romania) and Vrshatz outside the borders of Yugoslavia, as component parts of the former Metropolitanate of Karlovci, will be decided by the Holy Bishops Assembly in accordance with the need in agreement with the Patriarchal Executive Committee, and with the concordance with other competent factors.

## ARTICLE 16

Decisions of establishing, naming, liquidating, reorganizing, and the seat of the dioceses, and establishing or eliminating of position of vicar bishops, is decided upon by the Holy Council of Bishops, in agreement with the Patriarchal Council.

## ARTICLE 17

A Diocese, in the church-administration sense, is comprised of Episcopal Districts, church congregations, parishes, and monasteries.

## ARTICLE 18

The episcopal district is comprised of a determined number of church congregations and parishes under the supervision of a bishop's district deputy.

## ARTICLE 19

The organizing, naming, and discontinuing, and changes in the Episcopal Districts is decided by the Dioc-

esan Bishop in agreement with the Diocesan Ecclesiastical Court and the Diocesan Executive Committee, of which he shall inform the Holy Synod of Bishops and the Patriarchal Executive Committee.

## ARTICLE 20

A church congregation is comprised of adherents of the Serbian Orthodox Church with a priest on a specified territory, which may include one or more localities and having as its aim the caring of the needs for the church.

The decisions about founding of a church congregation is made by the Diocesan Bishop in agreement with the Ecclesiastical Court and the Diocesan Executive Committee, of which he informs the Holy Synod of Bishops and the Patriarchal Executive Committee.

## ARTICLE 21

A church congregation is comprised of one or more parishes.

Parishes in one locality make up one church congregation. Where there are more than 50,000 Orthodox souls, more than one church congregation may be organized.

## ARTICLE 22

A parish is a community of Orthodox persons which exists under the spiritual guidance of a parish priest.

There can be more parishes in one locality, and more localities may comprise one parish and one church congregation.

## ARTICLE 23

A parish is made up of at least 300, and at most 500 Orthodox families. Exceptions can be made in those places and sections where the terrain and other conditions do not permit such a grouping of parishes.

A family is every separate Orthodox household: Couples with or without children, or any family unit which has one head and single persons who have reached their majority (in age) who conduct a separate household.

## ARTICLE 24

The Diocesan Bishop, in agreement with the Diocesan Ecclesiastical Court, and the Diocesan Executive Committee, renders decisions on the forming of new and the discontinuance and reapportionment of old parishes. The Holy Synod of Bishops and the Patriarchate Executive Committee shall be informed.

## ARTICLE 25

Every Orthodox Christian belongs to the parish in which he is permanently settled (domiciled).

## ARTICLE 26

The parish has its parochial church. More parishes may have one mutual church. If there are more churches in one parish, only one of them is considered the parochial church; all the others are subordinate.

## ARTICLE 27

Exceptionally and temporarily and upon the decision of the Diocesan Bishop, parishes which do not have their church can make use of the monastery temple as a parish church. In such a case the congregation of that parish is duty-bound to supply the temple with all its needs, inasmuch as it serves as the parish church. In such places the head of the monastery, by his position, joins the church-congregational executive committee.

## ARTICLE 28

A parish has its office with its own birth-record books, church protocol records, and other prescribed books, and its seal.

If there are more parishes attached to one church, there is only one parish office with one set of record-books and other official books and one seal.

## ARTICLE 29

A monastery is a consecrated place with a church and other buildings, as a community of the monastic order, which are united in one spiritual fraternal community bound by solemn vows of abstinence, poverty, and obedience, and dedicated to prayer and toil.

Monasteries serve prescribed spiritual and charitable purposes.

## ARTICLE 30

The founding of new monasteries, as well as the merging of existing ones, is performed by the Diocesan Bishop, and he informs the Holy Synod of Bishops which grants the final approval.

For the founding of new monasteries there must be assured beforehand the material resources for its existence and proper life of the community.

## ARTICLE 31

Priories are separate monastery properties, with a church or without one. They are an integral part of their monasteries and are under their management.

## ARTICLE 32

All decrees for the monasteries in this constitution are valid monasteries as well as for convents.

## ARTICLE 33

Buildings dedicated to the service of God, church offices, church educational and charitable institutions, foundations for church use and needs, Episcopal, monastic and parochial homes, Orthodox cultural-historical monu-

ments (monastic and church lands, etc.), Orthodox cemeteries, and landscape of all of the above mentioned institutions are tax exempt.

ARTICLE 34

The Hoy Synod of Bishops publishes an official journal of the Serbian Orthodox Church. Detailed regulations relating to it are prescribed by the Holy Synod of Bishops in agreement with the Patriarchal Executive Committee.

ARTICLE 35

For the submission of permissible appeals against the decisions and verdicts of church authorities, insofar as another time limit is not ordered by this constitution, a time limit of fourteen days is hereby prescribed, counting from the day following the day of notification. If the appeal is submitted within the prescribed time to the post office with a return receipt requested or registered, it is considered that it was duly submitted. Appeals are submitted through the authority which has issued the verdict or decision.

ARTICLE 36

Persons of the monastic order cannot own any real estate. Upon the death of a monastic person, all his personal effects and worldly goods belong to the monastery, inasmuch as he has not already disposed of them during his lifetime.

ARTICLE 37

A Bishop can consider as his property, hold it, and manage it during his lifetime only that which he himself has acquired. Of such personal property a Bishop may in his testament will one-third freely according to his own discretion; the second one-third he is obliged to will for the needs of his Diocese; and the third one-third he is obliged to will to foundations or independent funds for the general needs of the Church.

A Bishop who is not a Diocesan Bishop is obliged to will to any Diocese the second one-third of his belongings.

ARTICLE 38

If a Bishop dies without a Will, from his real estate and personal belongings, funeral expenses will be paid and all of the debts he left, and the balance will be divided by the Holy Synod of Bishops according to the needs of the Church.

Vestments of a Bishop, his library and other church goods, after his death, belong to his diocese.

ARTICLE 39

All members of the Patriarchal, Diocesan, and Church congregation councils, except ordained persons, they secretaries and clerks of all church offices upon assumption of their duties, that this oath:

"I, (name and surname), swear by the Almighty God that I will be loyal to the Holy Orthodox Church, that I will conscientiously obey all Church Canons, Church constitution, and other Church laws and regulations, that I will carry out correctly my duties, guard official secrets, and always protect and defend the interests of the Serbian Orthodox Church. As I do this, so may God help me in this and the other world.

Members of Ecclesiastical Courts (Bishop's Deputies, Church prosecutors, Court secretaries, honorary members as well as alternate members), except the Bishop take this oath:

"I, (name and surname), swear by the Almighty God that I will be loyal to the Orthodox Church, that I will carry out my duties correctly and guard official secrets, and that I will, in the dispensing of justice, regardless of the persons involved, will hold to God's law, the Holy Canons, the Church Constitution, and

other Church regulations. As I do this, so may God judge and help me."

All named persons take the oath before the president of the bodies, or before his deputy, and put into his hands a signed oath, which he verifies and places in the archives.

ARTICLE 40

The Church fulfills its needs:

1. Receipts from Church property of all kinds, as well as from papers of value (securities);
2. Church taxes;
3. Assessments from Church congregations and monasteries;
4. Donations and bequests;
5. Receipts from Church foundations and institutions.

ARTICLE 41

For official acts of Church authorities and in hierarchal and self-governing spheres, the only tax which is payed, is the one which Church authorities prescribe.

## II. THE STRUCTURE OF AUTHORITIES, BODIES, AND ORGANS OF THE SERBIAN ORTHODOX CHURCH

### 1. The Patriarch

ARTICLE 42

The Patriarch is elected from among the Serbian active Diocesan Bishops, who have ruled Dioceses at least five years.

ARTICLE 43

The election of a Patriarch is done by an electoral Assembly, from among three candidates, who are nomi-

nated by the Holy Assembly Bishops of the Serbian Orthodox Church at a meeting at which there is present at least two-thirds of the Diocesan Bishops, under the presidency of the oldest member of the Assembly, a Metropolitan, or if such is not present, the oldest Bishop member of the Holy Assembly Bishops.

The names of the three nominated candidates are submitted in writing to the Electoral Assembly by the Holy Synod Bishops.

ARTICLE 44

The Electoral Assembly is comprised of:

1. All active Diocesan and Vicar Bishops of the Serbian Orthodox Church;
2. The Dean of the Orthodox Theology Faculty in Belgrade;
3. Rectors of Serbian Orthodox Seminaries;
4. The President of the Central Federation of Diocesan priests' association;
5. Bishops deputies of the cities of: Belgrade, Skoplje, Cetinje, Zagreb, Sarajevo, Pech, and Stremski Karlovci.
6. The abbots of monasteries: Zicha, Studenica, Dechani, Patriarchate of Pech, St Naum, Mileshevo, St Vasilijeo of Ostrog, Krusedol, and Krka;
7. Director of the monastic school and;
8. All members of the Patriarchal - Executive Committee and all vice presidents of Diocese Councils, inasmuch as they are not already members of the Patriarchal - Executive Committee.

Ordained persons mentioned in this article can be members of the Electoral Assembly if they are not under investigation or canonical suspension.

## ARTICLE 45

The Electoral Assembly meets in the capital, Belgrade, or in another place chosen by the Holy Assembly of Bishops for the election of a new Patriarch, at least within three months from the day when the Patriarch's throne became vacated.

The Electoral Assembly is convened by the Holy Synod of Bishops by a written act, in which the day, time and place are then stated of the meeting of the Electoral Assembly is specified. The invitation is sent along with a proof of receipt twenty days prior to the meeting of the Electoral Assembly.

## ARTICLE 46

The Electoral Assembly is presided over by the eldest member of the Assembly, a metropolitan, and if none be present, then the eldest bishop by consecration.

The president opens the Electoral Assembly. Upon invitation by the presiding bishop, the Electoral Assembly elects from its midst two secretaries of whom one is a clergyman and one a layman, and two members to verify the minutes, of whom also one is a clergyman and one a layman; the presiding bishop, together with these persons, examines the credentials of the present members and handles the affairs of the election.

Following this, the president calls upon the secretary to read the decision of the Holy Synod of Bishops concerning the summoning of the Electoral Assembly, and also the list of invited and present members of the Assembly.

## ARTICLE 47

When it is established that at least two-thirds of the members of the Holy Assembly of Bishops is present and also a majority (one over half) of the members of the Electoral Assembly, the Electoral Assembly begins with the invocation of the Holy Spirit. In case the quorum is not met, the election is postponed and the subject is re-

turned to the Holy Assembly of Bishops to designate the time for a new election.

Before approaching the election, members of the Electoral Assembly, excepting the Bishops, take in the Assembly the following oath:

> "I (name and surname) do solemnly swear by Almighty God and by all which is most holy, and most dear to me in this world that in the deliberations regarding the election of the Serbian Patriarch, have in view only the good and the interests of our Holy Orthodox Church, and the Serbian people, and the fatherland, and that I will give my vote only to that candidate about whom I am convinced that he will most conscientiously and best perform the duties of the Serbian Patriarch. As sincerely as I act, so may the Lord God help me in this and in the other world."

After the invocation of the Holy Spirit and taking of the oath, the President of the Electoral Assembly reads the act from the Holy Synod of Bishops by which they are informed of the names of the three candidates nominated by the Holy Assembly of Bishops for the election of a new Patriarch.

## ARTICLE 48

In the election of the Serbian Patriarch, only the members prescribed by this constitution can be present and can participate.

Of the absent members justifiably prevented from being present personally, only a Bishop can authorize, in writing, one of the present Bishops to vote in his name.

## ARTICLE 49

The election of one of the three candidates nominated by the Holy Assembly of Bishops is conducted by secret paper ballots which will be distributed by the secretary to the present members of the Electoral Assembly.

The secretary calls the roll of the members of the Assembly—according to the list; then every member submits his ballot in the box on the table of the President.

The counting of the ballots is performed by the President together with the two members elected to verify the minutes (art. 46). The President takes out one slip at a time from the box and reads aloud the name of the candidate written thereon, and then he hands the slip to the other two members who also read aloud the names of the candidates. The secretary immediately enters in the minutes the number of slips handed in and the number of votes received by each candidate, and also the number of blank slips, if any.

Ballots which are submitted for candidates not nominated in accordance with article 43 of this Constitution shall be considered void.

## ARTICLE 50

The candidate who receives an absolute majority of the votes is elected the Patriarch.

If among the nominated candidates none receive an absolute majority of the votes, then another vote is taken between the two with the highest number of votes. In case that in the first balloting two candidates receive an equal number of votes, eligible for the second ballot are: The candidate who received the largest number of votes, and the one of the other two who have received an equal number of votes, whoever has seniority either by rank or by episcopal consecration. If all three receive an equal number of votes, in the second balloting are entered the two candidates, who by their rank or by their episcopal consecration are eldest.

In case that even in the second balloting both candidates receive an equal number of votes, then the election between these two is conducted by drawing.

## ARTICLE 51

The name of the elected Patriarch is announced by the President of the Election Assembly, who closes (adjourns) the meeting of the Assembly.

## ARTICLE 52

The minutes of the Election Assembly are signed by the President, Secretaries and certifiers of the minutes, elected in accordance with Article 46 of this Constitution.

The acts (records) and the minutes relating to the work of the Election Assembly are preserved in the archives of the Holy Bishops Synod and a certified copy in the archives of the Patriarchate Executive Committee.

## ARTICLE 53

The next day, at a solemn holy pontifical liturgy, the Patriarch is seated (invested) in the manner as it is prescribed by the Holy Bishops Assembly.

After these rites, the newly elected Patriarch takes over the rights and duties of the supreme head of the Serbian Orthodox Church.

## ARTICLE 54

The Patriarch has within his Bishopric all the rights and duties of a Diocesan Bishop, and he rules in it with the assistance of his Vicar Bishops.

## ARTICLE 55

The Patriarch, as the supreme head of the Serbian Orthodox Church, besides the rights (privileges) given him by the canons and church regulations, also has the following:

1. Represents the Serbian Orthodox Church before the other autocephalous churches;

2. Represents the Serbian Orthodox Church at Church, State and People's celebrations;
3. Maintains the unity of the hierarchy of the Serbian Orthodox Church;
4. Consecrates, in accordance with church's prescribed rules, in person or through authorized Bishops, persons elected as Diocesan or Vicar Bishops;
5. Consecrates Holy Chrism for the entire Serbian Orthodox Church;
6. He grants leaves to Diocesan Bishops outside of their Dioeese;
7. He wears as a special church decoration, a white head-shroud, biretta, with a cross and a pictorial image of all Serbian Saints, presented by the State to the first Serbian Patriarch upon restoration of the Serbian Patriarchate, which remains as an inheritance to all Serbian Patriarchs;
8. He leads at church officials and is called "Holiness" and "Your Holiness";
9. He is mentioned at pontifical liturgies by Bishops in the entire Serbian Orthodox Church;
10. He bestows church decorations and honors, in accordance with the regulations prescribed by the Holy Bishops Assembly;
11. Appoints by decree clerks and officials according to this Constitution;
12. Rules churches in foreign missions where there is no Serbian Orthodox Diocese.

## HOLY ASSEMBLY OF BISHOPS AND HOLY SYNOD OF BISHOPS

a.) General and Mutual Regulations

## ARTICLE 56

The Holy Assembly of Bishops is composed by all diocesan bishops under the presidency of the Patriarch.

## ARTICLE 57

The Holy Assembly of Bishops, as the highest hierarchical body, is legislative authority in the matters of faith, officiation, church order (discipline) and internal organization of the Church, as well as the highest church juridical authority within its jurisdiction (Article 69 sec. 28).

## ARTICLE 58

The Holy Synod of Bishops is composed of the Patriarch, as the president, and four diocesan bishops, as members.

Members of the Holy Synod are elected by the Holy Assembly of Bishops for a two year period, alternating two each year.

Meetings of the Holy Synod of Bishops are held in smaller composition with two members under the presidency of the Patriarch or in full complement of all the members.

Members of the Holy Synod of Bishops have the right on traveling expenses and per diem when they work.

## ARTICLE 59

The Holy Synod of Bishops is the highest executive body (administrative and controlling) as well as juridical authority within its jurisdiction (Article 70, sec. 35).

The Holy Synod of Bishops decides under the presidency of the Patriarch of regular and special sessions of the Holy Assembly of Bishops.

## ARTICLE 60

The Holy Assembly of Bishops can promulgate fully valid decrees (decisions), except the election of Bishops

(Article 105), when there is present a majority of all Diocesan Bishops.

The Holy Assembly of Bishops and Holy Synod of Bishops makes its decisions unanimously or by a majority of votes. When there is an equal division of votes, the vote of the President decides.

## ARTICLE 61

When the Patriarch, for any reason whatsoever, is temporarily prevented to perform his duties as the President of the Assembly, or in the Synod, he is replaced by his authorization, by the oldest consecrated Metropolitan and member of the Assembly, or of the Synod, and if such does not exist, the oldest Bishop by consecration and member of the Assembly, or of the Synod.

## ARTICLE 62

If the Patriarch is prevented from performing his duties for a long and sustaining period of time, or if the Patriarchal throne is vacated, the authority of the Patriarch is performed by the Holy Synod of Bishops which announces that fact to the Diocesan Bishops and informs the State Authorities. The presiding duties of the Patriarch in the Holy Assembly of Bishops and the Holy Synod of Bishops is performed by the oldest, by consecration, by the member of the Holy Synod of Bishops Metropolitan, or the oldest by consecration Bishop, if there is no Metropolitan.

In such cases it is not possible to promulgate church law, decrees, laws and principle decisions.

## ARTICLE 63

If the Holy Assembly of Bishops or the Holy Synod of Bishops because of urgent need which cannot be delayed, exceptionally as in cases mentioned in Articles 61 and 62, must promulgate some Church-law decree, regu-

lation or basic directive for the Church, that is to be submitted later to the Patriarch for his consideration and approval. In case of his disapproval, the subject is given over to the Holy Assembly of Bishops for consideration and final decision, under the presidency of the Patriarch.

## ARTICLE 64

All the decisions of the Holy Assembly of Bishops and of the Holy Synod of Bishops of canonical and church nature, in regard to faith, officiation, church order and internal organization of the church, are valid and final.

## ARTICLE 65

All decrees of the Holy Assembly of Bishops and Holy Synod of Bishops are recorded in special minutes (protocol). Those minutes are signed by all members who attended and made decisions.

## ARTICLE 66

Holy Assembly of Bishops and Holy Synod of Bishops perform their duties (tasks) directly, or through organs and offices subservient to them.

## ARTICLE 67

The Patriarchal office conducts the business of the Holy Assembly of Bishops and the Holy Synod of Bishops and the office of the Patriarch, all under the direct supervision of the Patriarch.

## ARTICLE 68

The Holy Assembly of Bishops and Holy Synod of Bishops may call into their meetings for expert opinion, ordained and Lay persons who are not members of those bodies.

## b.) JURISDICTION OF THE HOLY ASSEMBLY OF BISHOPS

### ARTICLE 69

The Holy Assembly of Bishops, whose purpose is noted in Article 57 of this Constitution:

1) interprets the Orthodox Church Teaching, adhering in this to the regulations which the Holy Church, based upon Holy Scripture and Holy Tradition, had established;

2) regulates the internal and external mission of the Church for the strengthening, defense and propagation of the Orthodox Faith and purity of Christian morals; establishes for this the necessary organs and founds necessary foundations, institutions and societies;

3) prescribes the teaching plan and program of religious education and provides for the religio-moral training of the youth and faithful;

4) prescribes the qualifications for candidates for all regular, special, and missionary church positions of service;

5) founds theological and monastic schools;

6) regulates all questions of ritual according to general church rules, and in the spirit of the Orthodox faith;

7) founds institutions and foundations; for the making of church arts—icons and all church utensils, for the publishing of divine service books, for perpetuating church singing, and for other church needs; prescribes rules for the establishing of church museums, for preserving and restoration of church antiquities and monuments;

8) canonizes saints and prescribes the service for their commemoration;

9) interprets canonical-eccesiastical rules, those which are general and obligatory, and particular ones, and publishes their collections;

10) prescribes the duties and renders disciplinary regulations for the priesthood and all other ecclesiastical-hierarchical organs and personnel;

11) prescribes the dress for the higher and lower clergy of both branches;

12) prescribes the ecclesiastical-judicial procedure for all Ecclesiastical Courts;

13) issues rules in church marital affairs;

14) sets the rules for monastery life and for monastics residing in episcopal residences;

15) prescribes directives for service of confessors;

16) establishes in agreement with the Patriarchal council institutions for orphans and uncared for children of the clergy, and also institutions for other educational and benevolent purposes;

17) endeavors that the relation between the Church and State, and the mutual relations between faiths and denominations in the State be properly and without damage to the Orthodox Church regulated;

18) regulates and keeps an official list of candidates for the rank of bishop, and elects from among these worthy persons for diocesan and vicar bishops;

19) elects the rectors of Orthodox seminaries and directors of monastic schools;

20) elects, in agreement with the Patriarch, the chief Secretary of the Holy Assembly of Bishops and the Holy Synod of Bishops from among ordained persons;

21) exercises control over the work of the Holy Synod of Bishops;

22) prescribes the by-laws of the Synodal Fund (Art. 259), and approves its annual estimates of disbursements and incomes and the final accounts;

23) renders decisions concerning assessments of church congregations, monasteries, and dioceses in its sphere by agreements with the Patriarchal council, and in accordance with Article 40, pt. 3, and Article 263, and in agreement with the Patriarchal council provides for the satisfying of all needs of the Serbian Orthodox Church;

24) approves the by-laws of clergy associations of the white and monastic branches, and of all other societies which work for the benefit of the Orthodox Church, and exercises control over the same through the Holy Synod of Bishops;

25) prescribes its own agenda, and approves the agendas and by-laws for church-hierarchal organs, insofar as they are not otherwise so ordered by this Constitution;

26) settles disputes of jurisdiction between hierarchal and church-self governing organs;

27) ADJUDGES:

A) In first and in final instances:

a) disagreements between bishops and the Holy Synod, and between the Bishops and the Patriarch;

b) canonical offenses of the Patriarch;

B) In the second and final instance:

All the matters which the Holy Synod of Bishops judged in the first instance;

28) Upon petition of the adjudged, and upon an explanatory motion of the jurisdictional diocesan Bishop, lessens the punishment pronounced by the Supreme Ecclesiastical Court, prior to their execution, to wit: to life-time suspension of sacredotal functions, to defrockment from priestly orders, and to defrockment from priestly orders with excommunication from the church community;

29) performs other duties and functions which by this Constitution and by Church canonical regulations belong to its jurisdiction, and are not here enumerated.

## c.) JURISDICTION OF THE HOLY SYNOD OF BISHOPS

### ARTICLE 70.

The Holy Synod of Bishops is its jurisdiction which is marked in Article 59 of this Constitution:

1) maintains dogmatical and canonical unity and permanent connection with other Orthodox Churches;

2) protects and defends purity of teaching of the Orthodox Church on faith and moral, repel every incorrect teaching, religious and moral prejudice, superstitions, and harmful customs;

3) takes care of propagating Orthodox faith and supervises the internal and external church mission;

4) takes care of bringing closer unity of Christian churches;

5) grade, permit, and according to its findings, reward books on religion, and books of religious-moral content in general;

6) hovers over the life and work of theological and monastic schools, institutions and foundations for

preparation and education of candidates for all church services; elects teaching and educational personnel, and takes care for its education, appoints and suspends them from their duties;

7) takes care for furthering church literature, elects students for special studies and decides on reward for writers;

8) elects editor and supervises the official organ of the Serbian Orthodox Church and other official editions;

9) supervises on the matters on translation and edition of the Bible, work of the Holy Fathers and works of ecumenical and regional church councils;

10) hovers that all sacraments are minutely performed and takes care of solemnity, regularity and uniformity in performing church services;

11) grades and publishes service books and its translations;

12) grades and permits making of the holy icons for church and private use;

13) issues instructions for buildings of holy churches and monasteries;

14) gives instructions for making of church utensils, vestments and other church needs;

15) takes care of uniformity and perfecting of church singing, establishes and supervises singing schools;

16) takes care of preserving holy relics, of icons and other holy objects;

17) takes care of church art, church artistic monuments, antiquities and church museums;

18) gives instructions on rules in disputes of church marriage, and protects sanctity of church marriage;

19) takes care of church benevolent and educational foundations and institutions;

20) supervises the work of the Diocesan Bishop;

21) provides for the operation of vacant dioceses and appoints administrators of the dioceses;

22) gives rank of archimandrite and cross to protopresbyters, upon the written recommendation of the Diocesan bishop;

23) handles church funds and foundations which are entrusted to him;

24) takes care that relation between church and state and interconfessional relations in accordance with law punctually and without damage for the Orthodox Church are maintained;

25) prepares agenda and proposals for the Holy Assembly of Bishops, and executes its decisions;

26) forms committees of expert persons for preparing material for its work and also for the Holy Assembly of Bishops;

27) elects in understanding with the Patriarch clerks and office personnel for itself and for the Supreme Ecclesiastical Court;

28) proposes for approval of the Holy Assembly of Bishops its working plan;

29) takes care of all disputes on jurisdiction of church hierarchical authority if by this Constitution was not differently regulated;

30) supervises work of all organizations of clergy of white and monastic order, as well of other organizations which are working for the interest of faith and church;

31) studies reports of the Supreme Ecclesiastical Court and forwards it to the Holy Assembly of Bishops with its opinion and recommendation;

32) submits annual report of its work to the Holy Assembly of Bishops;

33) finally decides of founding, uniting and separating of monasteries;

34) performs also all other duties according to this Constitution which Holy Assembly of Bishops especially entrust it;

35) JUDGES:

A) In the first instance:

a) discord among the bishops;

b) canonical offenses of a bishop;

c) disciplinary official offenses of its organs and judges its discords;

B) In the last instance:

disciplinary offenses of teaching personnel of theological schools;

## 3. THE SUPREME ECCLESIASTICAL COURT

### ARTICLE 71

The Supreme Ecclesiastical Court is a higher church authority for the transgressions of priests, monks, and civilians and for church-marital disputes, as well as all church disputes and conflicts in the internal church direction (administration) which do not come before the jurisdiction of the Holy Bishops Assembly and Synod.

The seat of the Great Ecclesiastical Court is in the residence of the Patriarch.

### ARTICLE 72

The Great Ecclesiastical Court is permanent and is comprised of:

a) three Bishops members of the Holy Bishops Synod who are delegated by the Holy Bishops Synod, from its midst one of which it names (designates) as its President;

b) two honorary members, lay priests, and two of their alternates, which are chosen by the Holy Bishops Synod for four years;

c) one recorder, an ordained person (priest).

In case the President is prevented from attending, or a Bishop member they are replaced by Bishops, members of the Holy Bishops Synod who are named by the Holy Bishops Synod.

## ARTICLE 73

As honorary members in the Supreme Ecclesiastical Court and their alternates, it is permissible to appoint Lay Priests who have graduated higher theological schools and if possible law schools and have at least ten years of church-court or church-administration, or at least fifteen years of parish or church-education service.

## ARTICLE 74

As a (referent: reporter-recorder or secretary) of the Supreme Ecclesiastical Court there may be appointed an ordained person who has graduated higher theological and if possible law studies and has spent in church-court or church-administration service at least five years.

## ARTICLE 75

As a member of the Supreme Ecclesiastical Court and as a recorder (secretary) cannot be relatives, among themselves nor with the President by blood up to the fourth grade inclusive, and by in-law or christening up to second grade, inclusive.

## ARTICLE 76

The Great Ecclesiastical Court hands down fully valid decisions in a council comprised of a President, four members and a recorder (secretary).

In case of the absence of a recorder (secretary) for his duties, the President will appoint a clerk from the office of the Holy Bishops Synod of corresponding rank.

## ARTICLE 77

A member of the Great Ecclesiastical Court, who is personally interested, or has participated in the investigation, or has judged (the same) in a lower instance (court) cannot adjudicate that subject.

## ARTICLE 78

The President, or his alternate, and members of the Great Ecclesiastical Court in deciding, give their opinion completely independently.

The Court brings about its decisions by a majority of votes. The voting starts with the youngest member of the Court.

## ARTICLE 79

The Supreme Ecclesiastical Court, in the second and last degree (stage, presumably an appeal) considers, approves, adjusts, (changes) and annuls decisions and decrees of Diocesan Courts by its official duty or upon a submitted appeal.

Upon its official duty, the Great Ecclesiastical Court considers: (reviews)

1) decisions of Diocesan Ecclesiastical Courts which vote for the annulment of a marriage;

2) decisions of Diocesan Ecclesiastical Courts on the transgressions of priests of both orders ordering:

a) the loss of his services, calling;

b) the lifelong banning of priestly duties;

c) the divestment of a priestly rank;

d) the divestment of a priestly rank with the banishment (expulsion) from the church community

3) decisions (a sentence) for a permanent banishment (expulsion) of a layman from the church community, and

4) decisions of Diocesan Ecclesiastical Courts which the competent Bishops transmits to the Great Ecclesiastical Court.

All other decisions and sentences of Diocesan Ecclesiastical Courts the Great Ecclesiastical Court considers and adjudicates only on an announced appeal.

ARTICLE 80

The Great Ecclesiastical Court decides on the exclusion of individual Diocesan Courts as well as on conflicts of jurisdiction between those courts and in such cases it orders which Diocesan Court will judge the case. In the same manner it decides on the exclusion of the President and members of the Great Ecclesiastical Court.

## 4. THE PATRIARCHAL COUNCIL

ARTICLE 81

The Patriarchal council is the supreme legislative representative body in matters of external (material-financial) church government.

ARTICLE 82

The Patriarchal Council is comprised of:

a) The Patriarch;

b) four members of the Holy Synod of Bishops or

their alternates which the Holy Synod of Bishops may appoint;

c) the dean of the Orthodox Theological Faculty;

d) one rector of seminary;

e) one ordained person of the white clergy from each diocese;

f) the vice-presidents of the Diocesan councils; and

g) ten laymen.

Members under (d) and (e) are appointed by the Holy Assembly of Bishops upon the recommendation of the Holy Synod of Bishops, and members under (f) upon recommendation of the diocesan Bishop.

Members under (g) are appointed by the Patriarch upon recommendation of the Holy Synod of Bishops and the Patriarchal Executives Committee brought forth in a joint meeting.

ARTICLE 83

The Patriarch calls the Patriarchal Council into session, and determines its place and time of meeting.

From the summons to the meeting of the Council there must elapse at least one month.

ARTICLE 84

The mandate of the members of the Patriarchal council is for six years. The Council is summoned in regular session every other year, and in special session according to need, to wit:

a) when the Patriarch together with the Holy Synod of Bishops and the Patriarchal Executive Committee decide upon this;

b) when this is motioned in writing to the president by a over-half majority of the members of the Council, indicating the subjects to be decided. In

such a case, the meeting must be called at latest in thirty days.

## ARTICLE 85

The president of the Patriarchal Council is the Patriarch; i.e.; his legal deputy (Art. 61 and 62).

The Council elects from its midst the vice-president from among the lay members, and four secretaries, two of which are ordained and two lay persons.

## ARTICLE 86

The Patriarchal Council renders valid decisions if there be present at the meeting over-half majority of all members. Decisions are rendered by majority votes of those present. In case of tie, the presiding voice decides. He also announces the decisions.

## ARTICLE 87

Should the Patriarchal Council render a decision which, by the opinion of the Holy Synod of Bishops, is contrary to church rules, or is not in agreement with the principles of the Orthodox Church, the Patriarch withholds the execution of such a decision and returns the matter to the Council for re-decision. However, should the Patriarchal Council hold to its first decision, the Patriarch will, by evaluation of the Holy Synod of Bishops, submit the matter to the Holy Assembly of Bishops, which is empowered to invalidate such a decision of the Patriarchal Council, should it find it to be against the rules and principles of the Orthodox Church.

## ARTICLE 88

The meetings of the Patriarchal Council are public, except in cases when the Council itself decides that they be secret.

## ARTICLE 89

The President of the Patriarchal Council conducts the meetings according to the agenda and preserves order during the work of the council.

## ARTICLE 90

The Patriarchal Council, in the performance of its powers:

1) issues, with the priorly received agreement of the Holy Assembly of Bishops, regulations concerning the benefits of active and pensioned parish clergy, teaching personnel of seminaries, monastic and other schools, personnel of ecclesiastical courts, diocesan and vicar Bishops and of the Patriarch;

2) establishes the positions of clerks and other officials for the external church government, and issues regulations concerning their official relations, and also of their active and retirement benefits;

3) issues, with prior concent of the Holy Assembly of Bishops, regulations concerning the pension fund of Bishops and of all other church-hierarchical and self-governing clerks and officials, as also of the support of their wives and orphans;

4) prescribes rules of discipline for officials of external church government;

5) issues, with prior consent of the Holy Assembly of Bishops, regulations concerning the governing, handling, control and supervision of church funds, memorial bequests (foundations) and benefices;

6) provides for the material means to cover all the needs of the entire Serbian Orthodox Church in accordance with the regulations of this Constitution, and issues decisions of assessment upon the

church congregations and monasteries, or upon dioceses in accordance with Article 69, pt. 24, and Article 263;

7) prepares its own agenda for its work;

8) approves within its jurisdiction regulations, by-laws and agendas which are issued by the appropriate lower bodies and organs;

9) cooperates with the Holy Assembly of Bishops in the changing and amending of the Constitution of the Serbian Orthodox Church;

10) cooperates with the Holy Assembly of Bishops, in the establishing of institutions and foundations, whose maintenance falls upon the burden of estimates of disbursements and incomes for general needs of the Church;

11) renders the final decision, in agreement with the Holy Assembly of Bishops, concerning the mortgaging and alienating of church real estate properties which are designated for the general needs of the Church, and approves such decisions with regard to diocesan, monastery, and church congregational properties, and in both instances, if the sum exceeds 2,000.000 dinars;

12) examines and approves the final accounts for the general needs of the Serbian Orthodox Church which are submitted to it by the Patriarchal Executive Committee, and performs other functions of general church government insofar as they do not by this Constitution belong in some other jurisdiction.

## 5. THE PATRIARCHAL EXECUTIVE COMITTEE

### ARTICLE 91

The Patriarchal Executive Committee is the supreme executive (governmental and supervisory) authority over

church-self governing organs and is the Executive organ of the Patriarchal Council.

## ARTICLE 92

The Patriarchal Executive Committee is comprised of:

a) the Patriarch, or his legal deputy (Art. 61 and 62) as the president;

b) two members of the Holy Synod of Bishops;

c) one representative of the monasteries;

d) three priests, and

e) seven laymen

Members under (b), (c), (d) and (e) have alternates in the same number and position.

Members of the Holy Synod of Bishops are appointed by the Holy Synod of Bishops from their own midst, while all the remaining members and their alternates are appointed by the Patriarchal Council from its own midst, for a term of six years.

## ARTICLE 93

The Patriarchal Executive Committee is obliged to fulfill its activities up until the new members of the Patriarchal Executive Committee be appointed and installed.

## ARTICLE 94

The Patriarchal Executive Committee elects for itself from among its lay members a vice president, if possible from the seat of the Committee or from a nearby locality.

## ARTICLE 95

The Patriarchal Executive Committee may have for its legal matters its legal advisor.

## ARTICLE 96

The Patriarch, or his legal deputy, summons the regular meetings of the Patriarchal Executive Committee in the See of the Patrjarch every year in the spring and in the fall, and to special meetings when He himself so decides, or when this be requested in writing by at least one half the members of the Patriarchal Executive Committee, indicating precisely the subject because of which the special meeting is being sought.

## ARTICLE 97

If the Patriarch is convinced that some decision is contrary to the regulations of church rules or existing regulations, or that it is in conflict with the principles of the Orthodox Church, he is empowered to halt the execution of the decision and order a new debate. If even at this debate no agreement is reached, the Patriarch directs the subject to the Patriarchal Council for decision. In the event that the Patriarchal Council takes the same stand as the Patriarchal Executive Committee, then provisions of Article 87 of this Constitution are followed. If the matter is of an urgent nature, the Patriarch has the right of exception to send it to the Holy Assembly of Bishops, which is empowered, if it finds that an urgency exists, to render a final decision on the matter.

## ARTICLE 98

The Patriarchal Executive Board renders fully valid decisions if at the meeting there is present a over-half majority of all members. Decisions are rendered by majority vote of those present. In case of a tie, the voice of the presiding decides. He also announces the reached decision.

## ARTICLE 99

In cases of necessity, and especially where the agreement of the Holy Synod of Bishops and the Patriarchal

Executive Committee is required, the Patriarch or his deputy may call a joint meeting of both bodies for consultation and decision.

## ARTICLE 100

Matters which cannot be postponed are decided in presidium, or rather in smaller executive committee comprised of the president or his deputy (Art. 61 and 62), two ordained and three lay persons. These members are elected by the Patriarchal Executive Committee from among its own midst, if possible from the Seat of the Patriarchate or from the nearest locality. Decisions in presidium or in this smaller committee are subsequently submitted to the Patriarchal Executive Committee for approval.

## ARTICLE 101

The Patriarchal Executive Committee by its authority performs in the main these functions:

1) announces and executes, insofar as they belong to its sphere, the regulations and decisions of the Patriarchal Council;

2) controls the self-governing church organs in their work, and for this purpose as necessary sends its special representatives;

3) issues for the general needs of the Serbian Orthodox Church an estimate of the general disbursements and incomes, and compiles the final accounts, which it submits for approval to the Patriarchal Council;

4) approves for the needs of the dioceses their estimates of disbursements and incomes and final accounts of the dioceses, and approves the diocesan assessment dues from church congregations and monasteries;

5) approves the establishing of funds, the acceptance of memorial bequests (foundations) and their by-laws;

6) governs the funds, memorial bequests (foundations) and benefices, which are designated for the general needs of the Church, and exercises supervision and control over all church funds, memorial bequests (foundations) and benefices;

7) sees that churches, monasteries, and all other church-religious institutions have legal proofs of ownership of their holdings;

8) prepares and compiles within the limits of its sphere reports and suggestions from the field of church self-government and submits them to the Patriarchal Council;

9) publishes printed reports on the state of all church funds and memorial bequests (foundations);

10) makes the final decision concerning the mortgaging and alienating of church real estate properties which are designated for general needs of the Church, and approves such decisions in regard to diocesan, monastery and church-congregational properties, in both cases, if the sum does not exceed 2,000.000 dinars;

11) makes the final decision concerning the writing off of debts which belong to the general property of the Serbian Orthodox Church, and for which it is proven that the debt cannot be collected from the creditor; and decides about the removal from inventory of such property, and approves such decisions with regard to diocesan, monastery, and church-congregational debts and removal from inventory of things, if the sum exceeds for debts 50,000 dinars, and for removal from inventory of things 100,000 dinars;

12) approves decisions in all cases of receiving or giving under lease properties of church-congregations, monasteries, and dioceses, if the leasing price be greater than 200,000 dinars annually, while for all other properties regardless of the amount of the leasing price;

13) decides about grievances in the final and last degree, upon those subjects which Diocesan councils; i.e.; committees decide upon in the first, i.e., second degree;

14) elects its permanent clerks and other officials, which the Patriarch appoints and confirms by decree;

15) governs by agreement with the Holy Synod of Bishops the educational and benevolent foundations for the entire Church, which are supported and maintained at the burden of estimates of disbursements and incomes for the general needs of the Church. Excepted from this are the monastic, theological and other religious-educational schools and foundations, whose government belongs in the jurisdiction of the Holy Synod of Bishops;

16) endeavors that funds and memorial bequests be established for the Church's benefit;

17) prescribes its own agenda and that of the Diocesan councils, which are approved by the Patriarchal Council;

18) performs according to need other functions of a material nature, insofar as they do not belong by this Constitution in some other jurisdiction.

## DIOCESAN BISHOP

### ARTICLE 102

Diocesan Bishop, in his archpastoral calling, in accordance with Orthodox teaching and the church rules,

has full hierarchical authority in matters of faith and morals, officiation, and archpastoral care in his diocese.

## ARTICLE 103

Diocesan bishop, as direct head and representative of his diocese, in cooperation of the clergy and people, administers and guides in every respect in internal and external way religious and church life in the diocese.

## ARTICLE 104

As a diocesan and vicar Bishop can be elected that person:

a) who fulfills all canonical-legal conditions foreseen for the rank of Bishop in the Orthodox Church;

b) who has regularly completed an Orthodox Spiritual Academy or Orthodox Theological Faculty;

c) who is a citizen of Jugoslavia; this condition does not apply for Bishops of Serbian Orthodox Dioceses outside the country;

d) who by his zealous church service, and by his exemplary life and dedicated work for the good of the Church and people has acquired general respect and who has shown ability for the position of Bishop.

## ARTICLE 105

Diocesan and Vicar Bishops are elected by the Holy Bishops Assembly under the presidency of the Patriarch.

The election is conducted by the Holy Bishops Assembly when there is present two-thirds of all the Diocesan Bishops.

In the election of Bishops, if unanimity is not attained, voting is by secret ballot and is decided by the absolute majority of votes. If the votes are so divided, that no candidate receives an absolute majority of votes, then

we immediately proceed to a narrower election between the two who received the largest number of votes. Which candidate will go into the narrower election of those who received an even number of votes is determined by the Patriarch, who also decides in the narrower election if the votes are evenly divided. An absent member of the Holy Bishops Assembly can empower, in writing, his vote to one of the present members of the Holy Bishops Assembly, with which one Bishop can be empowered with only one vote.

After the completion of the election, the Patriarch proclaims the election of the candidate.

ARTICLE 106

To the newly elected and consecrated Bishops, the Patriarch issues a Gramata, which is signed by the Patriarch and members of the Holy Bishops Synod. The Gramata is published in the official newspaper of the Patriarchate.

ARTICLE 107

All church jurisdictions and organs in the Diocese are subservient to the Diocesan Bishop.

ARTICLE 108

In addition to his rights and duties according to ecclesiastical and canonical regulations, the Diocesan Bishop has in his jurisdiction:

1) To teach and enlighten the clergy and people in the diocese by words, deeds and by pastoral epistles;

2) Preserves, defends and maintains the Orthodox Faith in the people, repels every activity which is against the Orthodox teaching and which is harmful to the interests of the Serbian Orthodox Church.

3) Instruets and encourages the clergy and people to establish and organize religious-benevolent, spiritual-educational, patriotic and in general all beneficial institutions for the advancement of faith and morals in the people;

4) Sees to the regular and proper conducting of divine worship and of church order in general;

5) Endeavors that churches and monasteries be provided with holy corporals, holy Chrism, holy vestments and utensils and divine service books, and that all other necessities of the church be properly provided for without delay;

6) Orders as necessary that divine services be held during special church, national and state holidays;

7) Gives the blessing for the erection, where necessary, of churches, chapels, cemeteries, and endeavors that they be kept in good order;

8) Sees that churches, monasteries and chapels are built in the style that is adopted in the Serbian Orthodox Church, and that the churches, monasteries, and homes of the faithful are provided with icons in the Orthodox spirit;

9) Provides for the preservation of church antiquities;

10) Consecrates churches;

11) Ordains worthy persons into the priesthood, directs them to duty and gives them a gramata confirming this;

12) Recommends to the Holy Synod of Bishops for decoration ordained persons who have distinguished themselves by exemplary living and by their church-pastoral and religious-educational work, and bestows himself such decorations upon such persons which are within his authority to give;

13) Appoints from among worthy ordained persons of both branches, his deputy in all diocesan affairs, and relieves him of the same, informing the Holy Synod of Bishops;

14) Appoints the diocesan preachers and confessors for the clergy in the diocese;

15) Recommends, appoints, and confirms for the callings and duties in the Church and church-self-governing bodies the officials, clerks and servants, in accordance with the regulations of this Constitution;

16) Appoints capable persons for teachers of religion in the schools in his diocese and exercises supervision over their work;

17) Upon recommendation of the monastery superior, gives blessing to worthy persons for entering the monastic order;

18) Gives within his jurisdiction blessings and dispensations in church-marital and other matters in accordance with church-canonical regulations and the decisions of the Holy Assembly of Bishops;

19) Judges ordained persons of both branches for lesser (disciplinary) offenses, and punishes for these deeds by: warning, rebuke, penance up to fifteen days, and suspension of sacerdotal functions up to one month, and for greater offenses he submits them to the Ecclesiastical Court; he judges the faithful and pronounces punishments of temporary dismissal from particular rights or honors in the Church; all of these decisions are final;

20) May lessen degree of final punishment pronounced by the Diocesan Ecclesiastical Court up to one-half of the adjudged sentence;

21) In accordance with the regulations of this Constitution, suspends from sacerdotal functions ordained persons accused before the court for offenses – (Article 219) and appoints their substitute;

22) Grants to ordained persons and officials in his sphere vacations;

23) Appoints substitutes for absent and ill monastery superiors, district deputies, and parish priests;

24) Exercises supervision over the work of the district deputies and clergy of both branches in the diocese;

25) Exercises supreme supervision over the work and life within church foundations of his diocese, recommends to the Holy Synod of Bishops the appointment and dismissal of teaching and counseling personnel of these foundations;

26) Exercises in his diocese canonical visitations in accordance with church rules, sends special representatives of capable and worthy persons and gives them instructions for the examination of parochial and episcopal district offices, monastic governments and church congregations;

27) Sees that all orders, decisions, and regulations of higher ecclesiastical authorities are duly and accurately announced and carried out;

28) With the help of the Diocesan Ecclesiastical Court and the Diocesan Executive Committee, he sees that all church delegated authorities and organs in the diocese perform their duties conscienciously and properly, and that all things are carried out in accordance with existing regulations;

29) Submits to the Holy Synod of Bishops a report with his suggestions concerning his archipastoral work, and concerning the general estate of the diocese.

## ARTICLE 109

A Diocesan Bishop can have his deputy who represents him within the limits of his given authority.

## ARTICLE 110

A Bishops deputy can be such ordained persons, of both orders, who have met the conditions prescribed for members of Ecclesiastical Courts in this Constitution.

## ARTICLE 111

The Holy Assembly of Bishops may remove the Diocesan Bishop only by canonical verdict, or release him upon proof of incapacity, or by establishing proof of one of conditions provided for in (Article 104), as well as justified application for pension.

## ARTICLE 112

Vacant Diocese is governed by administrator, who is appointed by the Holy Synod.

As long as the Bishop's seat is vacant, there cannot be exercised any Diocesan function which would affect Diocesan organization, nor can there be made, any important changes in the matters which were initiated during the administration of the former Diocesan Bishop.

## ARTICLE 113

As soon as there is a vacancy in a Diocese, by any reason whatsoever, the Diocesan Ecclesiastical Court orders a Commission of three persons who are to accept, according to the inventory, all the assets of the Diocese. If something is missing, the Court will notify the Holy Bishops Synod, which will bring about a decision on restitutions (restoration or damages).

## ARTICLE 114

All inventoried real and personal property shall be submitted in writing to the administrator or to the newly appointed Bishop.

## ARTICLE 115

The Diocesan Ecclesiastical Court is an organ of the Diocesan Bishop for church adjudication and the affairs of the internal church direction.

## ARTICLE 116

The President of the Diocesan Ecclesiastical Court is the Diocesan Bishop, who, upon his authorization, can be substituted by Bishop's Deputy.

When the Bishop is presiding, the Bishop's Deputy may participate in the deliberation as a member of the Court.

## ARTICLE 117

The Diocesan Ecclesiastical Court is comprised of:

a) President;

b) Two honorary members, who have alternates;

c) Secretary-recorder;

d) Necessary members of lower personnel.

All the personnel of the Ecclesiastical Court are appointed or released by the Diocesan Bishop and of such actions he informs the Holy Synod of Bishops.

## ARTICLE 118

Members of the Diocesan Ecclesiastical Courts, their alternates, and secretaries (recorders) can be appointed from the ranks of ordained persons who have at least completed the regular seminary school and have at least ten years of court or church-administrative service. Priority goes to those candidates who have higher theological and possibly legal education.

## ARTICLE 119

As secretaries of the Diocesan Ecclesiastical Courts may be appointed, those persons who have finished a regular seminary and for officials, those persons, who have completed four grades of a middle school.

## ARTICLE 120

The duty of ecclesiastical prosecutor is performed by an ordained person, who is appointed by the Bishop.

## ARTICLE 121

Members of the Diocesan Ecclesiastical Court, their alternates, and Secretary (recorder) cannot be related, one to the other, nor with the President in degrees of relation as stated in (Article 75).

## ARTICLE 122

The Ecclesiastical Court makes full valid decisions when in a council made up of the President, or his Deputy, two members, and secretaries (or recorders) are present.

## ARTICLE 123

Members of the Court are replaced by alternates (also honorary members) and in case of need also a secretary of the Ecclesiastical Court.

## ARTICLE 124

A member of the Ecclesiastical Court who is personally interested, or one who has participated in the investigation of the subject being adjudicated, cannot take part in the judging.

## ARTICLE 125

The Diocesan Ecclesiastical Court decides as to the exclusion of members of the Court. In that decision, the

Diocesan Deputy, or secretary, replaces member of the court whose exclusion is sought. Should the exclusion of more than one member is sought, the exclusion is decided by the Supreme Ecclesiastical Court.

ARTICLE 126

The President and members of the Diocesan Ecclesiastical Court, cast their vote in the determination completely, independently, in accordance with the dictates of their conscience and in accordance with those rules prescribed in canon law.

ARTICLE 127

The Diocesan Ecclesiastical Court renders its decisions by majority of votes. The voting begins with the youngest member of the Court.

A member of the Court who does not agree with the verdict reached, has the right to state his reasons in writing in a separate opinion. Separate opinions are not given to the litigants.

ARTICLE 128

All decisions of the Diocesan Ecclesiastical Court, rendered at the meeting at which the Diocesan Bishop did not preside, are submitted to him for concurrence. If the Bishop does not concur with the decision of the Diocesan Ecclesiastical Court, he can direct the subject be submitted for a new trial by the Diocesan Ecclesiastical Court; and if the Diocesan Ecclesiastical Court holds to its first decision the Bishop can submit the subject with his explanation of his opinion, to the Supreme Ecclesiastical Court, which on the subject of this disagreement, render its mandatory direction in which case, the carrying out of the decision of the Diocesan Ecclesiastical Court is stopped until the Supreme Ecclesiastical Court rules.

ARTICLE 129

Decisions brought about at meetings of Ecclesiastical Courts are recorded immediately in the minutes which

are signed by all of the members who judged or decided, and by secretary also.

Decisions and verdicts which are announced relative to those cases, are signed only by the President and Secretary.

ARTICLE 130

Subject cases are decided in the order as they came into the Court, except those which the President or his Deputy deem as urgent and as more important and which are placed on the agenda.

ARTICLE 131

The President sorts out all the cases reported to the court for adjudication. He opens and closes meetings, and conducts the business of discussion and adjudication, seeing to it that all business does belong to the sphere of the Ecclesiastical Court, and are completely completed, expedited in the prescribed time.

ARTICLE 132

In the area of administration of internal church affairs, the Diocesan Ecclesiastical Court works according to the instruction of the Diocesan Bishop.

ARTICLE 133

On the subject of transgressions of priests, the Diocesan Bishop, after completing necessary investigation through His organs, makes a decision if he tends that the subject matter comes within his jurisdiction, on the contrary, he hands the subject to the Diocesan Ecclesiastical Court for action.

ARTICLE 134

The Diocesan Ecclesistical Court—

(a) As judicial organ:

1) Judges transgressions of priests of both orders;

2) Judges transgressions of the faithful which may call for expulsion from the church community for a certain period or permanently;

3) Judges, within its jurisdiction, conflicts on the validity, annulment and divorce of a church marriage;

4) Decides on disputes between priests, as well as disputes about parish income, and about real estate and other church property which is directed for the support of the clergy.

(b) As an organ of the Diocesan Bishop for the affairs of internal church government:

1) It supervises, at the direction of the Bishop, the parish clergy, parish offices, and Bishop's vicariates;

2) Announces and executes decisions of the higher Church authorities;

3) Assists the Diocesan Bishop in all the affairs of the direction and rule of the Diocese, and executes his orders in those affairs which belong to his personal jurisdictions;

4) Takes care of, in accordance with this Constitution, about the inventory of the Diocese in case of transfer, pensioning, or the death of the Diocesan Bishop;

5) Brings about decision regarding any changes in Church Records Books.

## ARTICLE 135

The decisions of the Diocesan Ecclesiastical Courts which are not subject to review by higher authorities are final, and they are executed by the subordinate ecclesiastical organs.

## 8. THE DIOCESAN COUNCIL

### ARTICLE 136

The Diocesan council is the representative body which deals with the affairs of the diocesan ecclesiastical autonomy.

### ARTICLE 137

The Diocesan council is comprised of:

a) The Diocesan Bishop or his deputy;

b) Two members of the Diocesan Ecclesiastical Court;

c) One priest-monk;

d) One clergyman and one layman from each of the districts of the diocese;

e) Five laymen who are appointed by the Diocesan Bishop by agreement with the Ecclesiastical Court and the Diocesan Executive Committee.

Members of the clergy are appointed by the Holy Synod of Bishops, and Members of the laity are appointed by the Patriarchal Executive Committee, both groups of which are nominated by the jurisdictional Bishop.

Alternates for members under (c) and (d) in the same number and in the same prescribed manner, and for those under (d) from the same diocesan district.

### ARTICLE 138

The president of the Diocesan Council is the Diocesan Bishop or his deputy, if the Bishop cannot attend the meetings at all.

In case the Bishop might be temporarily unable to preside at the meetings in the course of work by the Diocesan Council, he is substituted in presiding by the vice-president of the council.

The Vice-President from among the lay members, and two secretaries—one a clergyman, and one layman, are elected by the Diocesan Council amongst themselves by simple majority of votes.

## ARTICLE 139

The mandate of the Diocesan Council members is for six years. The Diocesan Council is summoned by the Diocesan Bishop, i.e., administrator, into session at least once yearly in regular session, and in special sessions according to the need.

## ARTICLE 140

The Diocesan Council may render valid decisions when a simple majority of members is present, and it renders decisions by majority votes. In case of a tie, the vote of the presiding member decides.

The Minutes of the Diocesan Council are signed by the president, secretaries, and by the two members of the Council elected by the Council for this purpose.

## ARTICLE 141

The Diocesan Council, in addition to other functions prescribed by this Constitution, has under its jurisdiction:

1) Concerns itself with ways and means for satisfying the material needs of the diocese;

2) Submits an estimate of income and disbursements annually for the needs of the diocese, compiles the final accounting, and sends them for approval to the Patriarchal Executive Committee.

3) For the needs of the Diocese sets the amount of assessments of church congregations and monasteries, and submits such decisions to the Patiarchal Executive Committee, which approves them in conjunction with the Holy Synod of Bishops;

4) Renders decisions concerning the incurring of debts and of alienating of Diocesan properties, and submits them for approval to the Patriarchal Executive Committee if up to 2,000.00 dinars, and to the Patriarchal Council if over that amount;

5) Renders final decisions in the writing off of accounts which are due to the diocese, and for which it be proven that they cannot be collected, and of recording the disbursement of items of property—to wit: the writing off of accounts up to 50,000 dinars; the disbursement of things up to 100,000 dinars, while anything over these sums it submits its decision to the Patriarchal Executive Council for approval;

6) Decides concerning the initiating and cessation of law suits, as also of reaching settlements with regard to diocesan property, but if the value of the suit, i.e., the settlement, be greater than 200.00 dinars, submits its decision for approval to the Patriarchal Executive Committee;

7) Issues directives, according to the regulations prescribed by the Patriarchal Council, concerning the governing, handling and control of diocesan benefices, funds, memorial-bequests (foundations) and other various institutions;

8) Establishes diocesan funds and religious, benevolent, church-educational and other beneficial institutions and foundations;

9) Selects from its midst regular members for the Diocesan Executive Committee and their alternates;

10) Submits to higher jurisdictional and ecclesiastical authorities petitions, proposals and suggestions concerning the subjects and needs which affect concerned diocese or the entire Church;

11) Submits to the Patriarchal Executive Committee a report of its work.

## ARTICLE 142

In case it be impossible to summon the Diocesan Council the opinions on urgent and important subjects can be sought from members of the council in writing.

## ARTICLE 143

If a member of the Diocesan Council does not respond to an invitation and does not attend two consecutive meetings, the Bishop shall nominate in his place to the Holy Synod of Bishops, i.e., the Patriarchal Executive Committee, another person as member of the Diocesan Council, relevant to (Article 137-c) of the Constitution, i.e., he shall name the appointee in agreement with the Ecclesiastical Court and Diocesan Executive Board (Article 137-e) of the Constitution.

## 9. THE DIOCESAN EXECUTIVE BOARD

## ARTICLE 144

The Diocesan Executive Committee is the executive (governing and controlling) authority in matters of external church government in the diocese and the executive organ of the Diocesan Council.

## ARTICLE 145

The Diocesan Executive Committee is comprised of:

a) The Diocesan Bishop or his deputy;

b) One person of the monastic order;

c) Three members of the clergy;

d) Six laymen;

(Members under (b), (c), and (d) have the same number of alternates)

## ARTICLE 146

Regular members and alternates of the Diocesan Executive Committee are elected by the Diocesan Council for a term of six years. They are obliged to perform their duties until the appointment and installation of the newly-elected members of the Diocesan Executive Committee.

## ARTICLE 147

The President of the Diocesan Executive Committee is the Diocesan Bishop or his deputy.

The Diocesan Executive Board elects its vice-president from among the regular members of laymen, if possible one who resides in the place of headquarters of the committee, or from a near-by community, and for secretary, a person with the necessary qualifications.

## ARTICLE 148

The members and the secretary of the Diocesan Executive Committee may not be relatives as described in (Article 75).

## ARTICLE 149

The Diocesan Bishop, i.e., the administrator of the diocese, summons the regular meetings of the Committee at the see of the diocese semi-annually, and in special session in the following cases:

a) When so determined by the president;

b) When so requested by at least one half the members of the Diocesan Executive Committee in writing, indicating the subject concerning which such a special meeting is being requested.

## ARTICLE 150

Any member of the Committee who is prevented to comply with an invitation to attend a meeting is ob-

ligated to give timely notice to the president, who shall in turn and in case of need, invite an alternate to take the absent member's place.

If a member of the Diocesan Executive Committee, i.e., a member alternate, neglects his duty and fails for three consecutive times to attend a meeting, the Diocesan Council shall at its first meeting elect another member in his place, i.e., alternate.

## ARTICLE 151

In order that valid decisions be rendered, it is necessary that over half of the members of the Committee participate in its meeting.

Decisions are rendered by a simple majority of votes of members present. In case of a tie, the vote of the presiding officer decides.

The Minutes of the Diocesan Executive Committee are signed by the president, secretary and the two members of the Diocesan Executive Committee who were elected for this purpose (one clergyman and one layman).

## ARTICLE 152

Matters which are of an urgent nature and cannot be postponed, are decided upon in presidium, or in smaller committee, comprised of: The Bishop or his deputy, one clergyman and one layman, from the headquarters see of Diocese or from a nearby community, which is elected by the Diocesan Executive Board from among its midst. Presidium decisions and decisions of this smaller committee are submitted for supplemental approval to the Diocesan Executive Board.

## ARTICLE 153

The Diocesan Executive Committee, in addition to functions prescribed by this Constitution has in its jurisdiction:

1) To be concerned about the material ways and means for the religious, benevolent, spiritual-educational and other beneficial institutions and foundations in the Diocese;

2) Governs and handles the benefices, funds and memorial bequests (foundations) of the Diocese according to church regulations;

3) Prepares an annual estimate of disbursements and incomes and final account for the needs of the Diocese and submits them to the Diocesan Council which approves the estimates and final accounts and submits them to the Patriarchal Executive Committee for final approval;

4) Oversees all church self-governing organs in the Diocese in the performance of their duties and towards this end dispatches when needed its representatives with necessary directives; and exercises control over those benefices, funds, memorial-bequests (foundations) which are entrusted for governing and handling to lower church-self-governing organs in the Diocese;

5) Examines and approves estimated disbursements and incomes of church congregations and monasteries;

6) Endeavors that accurate inventories be kept of church and church-self-governing properties in the Diocese, that all real property be provided with the prescribed legal proofs of ownership, and that all buildings and properties be insured against fire and other inclemency of the elements;

7) To forward with its opinion the decisions of Church-Congregational Councils dealing with the alienating and mortgaging of church property up to the amount of 2,000.00 dinars to the Patriarchal Executive Committee for approval, and over that sum, to the Patriarchal Council for approval;

8). Approves decisions of the Church-Congregational Councils concerning the writing off of accounts, which cannot be collected from the creditor, up to 50,000 dinars, and concerning the expendible items up to 100.00 dinars, and for sums over those amounts forwards such decisions with an opinion for approval by the Patriarchal Executive Committee.

9) Renders final decisions concerning the leasing of Diocesan properties up to 200.000 dinars, and approves such decisions of Church-Congregational Councils, and sums over that amount forwards its decision, or the decision of the Church-Congregational Council, for approval to the Patriarchal Executive Committee;

10) Approves decisions of Church-Congregational Councils concerning the initiating or cessation of litigations, as also concerning settlements relative to Church-Congregational properties, but if the value of the litigation or settlement is more than 200.000 dinars, forwards its decision with its opinion for approval to the Patriarchal Executive Committee;

11) Approves the building of new buildings and greater repairs in church congregations;

12) Appoints when needed, in agreement with the Diocesan Ecclesiastical Court, a defense attorney for legal affairs in the Diocese;

13) As the first degree authority decides administrative disputes in the Diocese, in-so-far as they pertain to external church government, and decides upon the petitions and decisions of sub-ordinate organs;

14) Prepares and submits to the Diocesan Council a report of its work for the Patriarchal Executive Committee;

15) Determines the election day for Church-Congregational Councils;

16) Executes and announces the decisions, orders, and directives of the Diocesan Council and the Patriarchal Executive Committee;

17) Prepares a report and suggestions to the Diocesan Council;

18) Decides concerning the alienating and mortgaging of monastery properties as also the writing off of accounts and of writing off expendible items relative to (Article 212-2);

19) Concerns itself, together with the Ecclesiastical Court, that the necessary and possible trades and husbandry be developed in the monasteries.

## ARTICLE 154

Every Diocese according to need can have its attorney with the qualifications of a judge in civil court, who is at the same time the attorney for affairs of the Diocesan Council and the executive of the said Diocese.

The Diocesan attorney represents the interests of the Diocese before the authorities in legal and judicial matters, and is obliged, upon request of either the Diocesan Ecclesiastical Court or the Diocesan Council and Committee, to give them his legal opinions.

## ARTICLE 155

All decisions of the Diocesan Council and the Diocesan Executive Committee, rendered at meetings which were not presided over by the Bishop, i.e., administrator, are submitted to the Bishop, i.e., the administrator, for examination and approval.

## ARTICLE 156

If the Diocesan Bishop, i.e., the administrator, is convinced that some decision or the Diocesan Council and the

Diocesan Executive Committee is against church regulations, or that it is not in agreement with the fundamental teachings of the Orthodox Church, he is obliged to suspend the execution of such a decision and return the subject for renewal of decision. If even then an agreement cannot be reached, the Bishop, i.e., the administrator, directs the said subject to the Patriarchal Executive Committee for consideration and decision, and consequently in case of necessity that here too, the provision from (Article 97) of the Constitution be applied.

ARTICLE 157

The Diocesan Bishop may in cases of necessity for important diocesan matters convene the Diocesan Ecclesiastical Court and the Diocesan Executive Committee, in a joint meeting for counciling and decision.

ARTICLE 158

The clerks of the Diocesan Ecclesiastical Court and the Diocesan Executive Committee, are obliged to perform all work services of the Ecclesiastical Court, and the Diocesan Executive Committee, which the Bishop may order; in case of need, the Bishop may entrust to the clerks of one of these two diocesan church bodies work-services which belong in the sphere of one or the other of these two bodies.

## 10. BISHOP'S DISTRICT DEPUTY (Vicar-General)

ARTICLE 159

The position of Bishop's District Deputy (vicar-general) may be held by a member of the priesthood who:

a) Has completed satisfactorily the regular or higher theological school;

b) Has shown zeal in the performance of parochial or other church duties;

c) Is of good comportment and leads an exemplary life;

d) Has spent at least ten years in parochial or some other church service, but if he has higher theological training, at least five years.

## ARTICLE 160

The Bishop's district deputy is appointed and relieved by the Diocesan Bishop.

## ARTICLE 161

The Bishop's district deputy may have an assistant, a member of the priesthood, to assist him in all parochial and chancery duties as needed.

The Assistant is appointed and relieved by the Diocesan Bishop. The assistant has his own parish.

## ARTICLE 162

In his district, the Bishop's district deputy (vicar-general), is obliged according to his jurisdiction:

1) To be concerned with the purity and strengthening of the Orthodox faith, with the proper and regular preaching, with the religio-moral development and education of the faithful;

2) To subdue all movements and actions directed against Orthodoxy and the interests of the Church;

3) To see to the preservation and encouragement of good customs, and of subduing and up-rooting harmful habits and vices among the people;

4) To endeavor that religio-benevolent and spiritual-educational foundations be organized in his jurisdiction, in accordance with local circumstances

and needs, concerning which he gives his proposals and opinions to the Diocesan Bishop;

5) To see that divine worship be properly and regularly conducted, and that beauty, dignity and good order prevails in the churches;

6) To see that churches are properly furnished with necessary utensils and articles, and that parish offices are provided with proper official record books;

7) Oversees that the clergy perform their duties and behave in accordance with the requirements of the priestly calling, and that love, unity and mutual cooperation prevails among the priests;

8) Endeavors to remove every misunderstanding among the priests, to discuss lesser disagreements among them and to keep peace among them, and to forward greater disagreements to higher authorities;

9) To visit at least once a year all the parishes in his jurisdiction, at which time he carefully examines and oversees the pastoral, religious-educational, and administrative work of the parish clergy, also the work of the Church-Congregational-Councils and Church-Congregational Committees, and to submit as a result of his examination an accurate and detailed report with his remarks and suggestions to the appropriate diocesan authority;

10) To carry out investigations, upon direction from diocesan authorities, dealing with disciplinary and transgressionary matters and with the administrative affairs of the clergy, parochial offices, Church-Congregational-Councils and Church-Congregational Committees as also of individuals;

11) To execute and announce all decisions, directives and orders of the Diocesan Bishop and diocesan authorities;

12) To mediate estranged couples, and decides concerning the abrogation of pre-marital examinations;

13) Keeps an accounting of clergy comportment in his district and submits an annual report of the same to the Jurisdictional Bishop;

14) Admonishes the clergy for neglect of official duties;

15) Authorizes leaves (vacations) for subordinate clergy for up to ten days annually of which he informs the Diocesan Bishop, while requests for longer vacations he forwards with his opinion to the Diocesan Bishop;

16) Appoints temporary substitutes for vacationing, ill, and deceased parish priests until further orders from the Diocesan Bishop;

17) To call upon his own discretion or upon request of the clergy, and with prior consent of the Diocesan Bishop, gatherings of the clergy for fraternal discussions on the needs and betterment of the Church, of pastoral duties; and of how to better strengthen in the believers the Orthodox faith, religious-moral feelings and attitudes; mutual love, patriotism, spiritual, educational, and Christian virtues;

18) To submit an annual report with his opinions and suggestions to the Diocesan Bishop on the state of the churches and the church-pastoral work of the priests, and of his own work.

## ARTICLE 163

The Bishop's District Deputy may take leave of his duties only with the knowledge and consent of his juris-

dictional Bishop, who shall in such case appoint his substitute.

## H. RECTOR

### ARTICLE 164

At the head of every parish is the rector, who must reside in his parish, and who cannot distance himself from the place of his service without the knowledge and consent of the appropriate church authorities.

The calling of Rector may be permanent or temporary; both of which are appointees of the Diocesan Bishop.

### ARTICLE 165

Any person may be appointed as temporary rector (parish priest) who has completed the higher or regular theological school, and who has no canonical impediments for Holy Orders.

To the position of permanent parish priest (rector) may be appointed that member of the clergy who has spent at least three years as an ordained priest or deacon, and who has passed the prescribed examination of practice, or who has been granted waivers of these requirements.

### ARTICLE 166

The filling of a vacant parish with a permanent priest is done by concourse, which the Diocesan Bishop publishes in the official journal of the Serbian Orthodox Church.

Candidates with the qualifications above stated apply and submit the necessary documents to the Diocesan Bishop.

### ARTICLE 167

Members of the priesthood with higher theological training are privileged to take the examination of practice for the post of permanent parish priest after two years of temporary parochial or diaconate service.

ARTICLE 168

The examination of practice for permanent parish priest is according to the regulations prescribed by the Holy Council of Bishops.

ARTICLE 169

The following are exempt from the examination of practice:

Professors of theological faculties and seminaries, teachers of religion who have passed the catechetical examination, members and secretaries of ecclesiastical courts, clerks of the Supreme Ecclesiastical Court and higher clerks of the Holy Synod of Bishops, the Patriarchal Executive Committee and Diocesan Executive Committees, provided they have been ordained priests and occupied these positions for at least three years.

ARTICLE 170

By regulation parochial duties are performed by the white clergy, however, in case of a shortage of these, and where exceptional conditions require, the Diocesan Bishop may entrust the servicing of a parish to priest-monks, i.e., to the monastery brotherhood. Priest-monks who service parishes are supported by their monasteries, to which are due all incomes from those parishes.

ARTICLE 171

While there are several parish priests attached to one church the Diocesan Bishop appoints one of them as the elder of the church, who at the same time is in charge of the office of the parish jurisdiction. The head rector is responsible for order in the church and office of the parish jurisdiction.

ARTICLE 172

The Bishop may remove a permanent priest from a parish or transfer him only upon his own request or con-

sent, or by judgement of the Jurisdictional Ecclesiastical Court.

The Bishop may transfer temporary parish priests according to need of services.

## ARTICLE 173

Every parish may have a deacon. It is obligatory for the Bishop's cathedral and those churches so directed by appropriate Diocesan authorities to have a deacon.

Deacons are obliged to assist the rector (elder of the church) in the conducting of church administration, and are subordinated to him officially.

## ARTICLE 174

Deacons are appointed in the same manner as temporary parish priests, from among those who fulfill the conditions described in (Article 165). Years spent in the diaconate are recognized as years having been spent in parochial duties.

In addition to benefits from the church, deacons also have the right to benefits (stipends) as other clergy for participation in funerals and marriages.

## ARTICLE 175

Every rector performs his parochial duties and fulfills his office duties independently, but concerning his official work he is under the direct supervision of the elder (first rector) of the church and the jurisdictional Bishop's district deputy (vicar-general), and under the supreme supervision and direction of his Diocesan Bishop.

## ARTICLE 176

The Rector has basically the following duties:

1) He serves his parishoners as a good example in his personal and family life;

2) He regularly preaches the word of God and instructs his parishoners in the Church and at every good opportunity;

3) He serves regularly the Divine Liturgy and the daily church office, he administers the Holy Mysteries and sacramental rites for his parishioners in the Church and in the parish according to the regulations of the holy canons, church laws and rules of the church authorities;

4) He conducts general intercessions, thanksgiving services and requiem memorial services according to the church regulations and directives of church authorities;

5) He conducts processions and the carrying of the cross with hallowing of water in those places and where and how the custom prevails, he conducts prayers at the beginning and closing of the school year, performs the cutting of the Patron Saint "Kolac" on the Church "Slava" and on the feast of St. Sava, with the blessing of water;

6) He announces to the congregation in Church, the holidays that are celebrated and explains their significance;

7) Administers the religious-moral education and development of Orthodox youth out of school, and conducts religious classes in the schools, if they do not have a permanent teacher of religion;

8) He sees to the good order, pious and proper reading and chanting during divine-services, and to the cleanliness and graceful beauty in the churches and makes arrangements in this regard, as of also concerning the use, acquisition and maintenance of vestments, church vessels and

utensils, service books, and especially concerning the support and maintenance of the cemetery and other consecrated places and church antiquities;

9) He takes care of the library of his church, of the spreading of religio-moral books among the parishoners, and zealously subdues the spreading of writings whose content is against the teachings of the Orthodox faith and morals;

10) He visits his parishoners to give pastoral counsel, and directs them unto christian benevolence; and in agreement with the Church-Congregational Council, he strives toward the organization of benevolent services and the founding of church-benevolent foundations;

11) He repels faithless and unorthodox propaganda and informs the Bishop's District Deputy of every attempt and manifestation directed against the faith, and in important cases also the Diocesan Bishop; he repels illegitimate living, drunkeness, blasphemy, cursing and all other bad habits among the people;

12) Reconciles quarreling and estranged couples;

13) Fulfills on time and decisions and directives of his superior authorities;

14) He keeps accurate and up-to-date, the record books of baptisms, pre-marital examinations, marriages and deaths, together with a parish register of homes, and other official books, keeping them in good condition and order; he issues excerpts and certificates, either by request of individuals or by official duty, and in accordance with the regulations regularly sends annual re-

ports and statistical data concerning the status of the parish to the Diocesan Ecclesiastical Court;

15) Keeps a record chronical of his parish;

16) Appoints and dismisses the church sexton and chanter by agreement with the Church-Congregational Committee; instructs them, directs and supervises them in their work; in the event of a disagreement between the rector and the Church-Congregational Committee on the question of the canter and church-sexton, the dispute is decided with finality by the Diocesan Bishop.

The position of permanent parish priest becomes vacant by transfer to another church service (duty), transfer by request, consent or judgment, by loss of the parish, retirement, and death.

An arbitrary absense from parochial duties for a period of longer than 15 days, or by not assuming the duties by the 21st day after having been appointed or transferred draws the penalty of loss of parish.

## ARTICLE 178

In every Church congregation there exists a religious-benevolent Trustee-ship whose function is to disseminate religious and church consciousness and christian charity, as well as for other activities of the internal mission of the church. This trusteeship is appointed by the diocesan Bishop from the ranks of the faithful of both sexes. It is an organ of the Church-congregational Committee. The Religio-benevolent trusteeship has its fund, which is derived from the donations of the faithful and from aid which is given by the Church congregation. Further regulations dealing with the sphere of activity of the religio-benevolent trusteeship and the handling of his fund are prescribed in a special by-laws which was issued by the Holy Council of Bishops under AS No. 136/Min. of Sept. 13/26, 1932.

## 12. CHURCH-CONGREGATIONAL COUNCIL and the CHURCH-CONGREGATIONAL EXECUTIVE COMMITTEE (Board)

### a) Church-congregational Council

### ARTICLE 179

The Church-congregational council is elected by the male and female members of the church congregation who are 21 years of age and who have not lost church voting privileges.

### ARTICLE 180

ELECTION RIGHTS at elections of the Church-congregational council is lost by the person:

1) who is not of a pious and moral life;

2) who consciously does not fulfill his church-religious duties and who does not fulfill his obligations toward the Church, family and his neighbors;

3) who, because of criminal activities in general, or because of some other criminal act, if such act was committed for self-interests or against the faith or against public morals, is under investigation, or who has been judged and sentenced, for the duration of the consequences of that judgement;

4) who lives in illigitimacy, or who is in a married state which has not been blessed by the Church;

5) who is under judgment or the consequences of a judgment decreed by church authorities;

6) who is under a guardianship or seizure;

7) who is under suspension by the regulations of this Constitution from the Church-congregational council or the Church-congregational executive

committee, for the period of time as determined by the Diocesan Executive Committee;

8) who is a member of any society or organization whose work is directed against the Orthodox faith and the interests of the Orthodox Church.

Conditions stated in points 1, 2, and 8 are determined by decision of the Diocesan Executive committee upon considering grievance against the election slate.

## ARTICLE 181

Every parish keeps a list of electors in accordance with provisions of this Constitution. This list is compiled by the Rector together with the Church-congregational Executive Committee, and based upon the parish books, each year during the first half of the month of May.

The list contains the name and sur-name, date of birth, occupation and address of every elector.

The list is publicly displayed for review in the parish office for 14 days of the second half of the month of May, concerning which parishoners are informed by announcement on the church-doors, and by vocal announcement by the priest in church. Every parishoner can, while the list is displayed, make his remarks in writing to the Church-congregational executive committee, which shall render a decision within 8 days. This decision can be appealed within 15 days of the day it was issued to the Diocesan Executive committee through the Church-congregational executive committee. The diocesan Executive Committee's decision is final.

The list is made in duplicate, one of which remains in the parish office, while the other is submitted to the Diocesan Executive Committee.

## ARTICLE 182

The Church-congregational Council consists of from 24 to 60 members, and one half as many alternates, accord-

ing to the number of faithful. The number of members is determined by the Diocesan Executive Committee.

All rectors in charge of churches are members of the Church-congregational council ex-officio.

The number of members of Church-congregational councils, according to the number of orthodox souls in the church congregations shall be: for up to 2,000 souls, 24 members and 12 alternates; up to 4,000 souls—30 members and 15 alternates; from 4 to 6,000 souls—40 members and 20 alternates; and over 6,000, 60 members and 30 alternates.

This number can be, if necessity indicates, either lowered or raised by the diocesan Bishop in agreement with the Diocesan executive committee.

## ARTICLE 183

Every member, male and female, of the parish can be elected to the Church-congregational council who:

1) meets all the conditions of an elector in the church-congregation;

2) who is at least 25 years of age;

3) who is a citizen of Jugoslavia;

4) who resides in the said church congregation for at least one year.

## ARTICLE 184

The Church-congregational council is elected for a term of six years, and meets in the headquarters of the church congregation in regular session twice a year. In these sessions, in addition to other business, it prepares an estimate and examines the concluded accounts.

The Church-congregational council meets in special session:

a) when so decided by the Church-congregational executive committee;

b) when a majority of the members of the church-congregational council requests it in writing, indicating the subjects to be considered;

c) when so ordered by the Diocesan Executive Committee;

In cases under points b) and c), the meeting must be called within 30 days.

ARTICLE 185

To elect members of the Church-congregational council, the electors meet on the appointed day at the headquarters of the church congregation.

The day and place of the election is determined by the Diocesan executive committee upon a hearing of the Church-congregational executive committee. The vacancies of membership in the Church-congregational council are filled by alternates.

ARTICLE 186

The electors are summoned by the Church-congregational executive committee, and the oldest priest by rank, i.e., according to ordaination, the rector (head of the church), presides, who nominates the secretary and two literate electors, together with whom the legitimacy of voters is determined, counting of ballots, and verifies the minutes of the election.

The election is conducted by slate, to wit: by acclamation or by individual oral voting.

A slate of candidates must be signed by at least as many electors, as one half of the total number of church-congregational councilmen to be elected. No one person can sign more than one slate.

Prior to authorization of the slate, the candidates and alternates appearing on the slate must personally give to the Church-congregational committee their written consent that they accept the nomination.

Voting, both for members of the Church-congregational council and their alternates, is conducted at the same time.

## ARTICLE 187

Upon completion of the election, the president announces the results of the election.

The president shall submit a notarized copy of the minutes of the election to the Diocesan Executive Committee within eight days from the day of election.

Grievances to the election are submitted through the president within eight days of the day of election to the Diocesan executive committee which renders the final decision.

## ARTICLE 188

The elected members of the Church-congregational council is summoned to a meeting by the president of the election who presides at the same, for the purpose of constituting, and before whom all members except clergy take the oath (article 39).

After taking the oath, the Church-congregational council elects by secret vote its president, vice president and secretary.

The rector (eldest head of the church) is the honorary president of the Church-congregational council.

## ARTICLE 189

Upon becoming constituted, the Church-congregational council immediately proceeds to the election of the Church-congregational executive committee by secret ballot.

The minutes of the council's being constituted, and of the election of the Church-congregation executive committee must be submitted in notarized copy within eight days after the election to the Diocesan executive committee for examination and approval.

## ARTICLE 190

The church-congregational council can render valid decisions if there be present at a meeting more than one half of its members.

Decisions are rendered by majority vote of those present. In case of tie, the presiding voice decides.

If at the first meeting a quorum of members to render valid decisions is not present, the meeting is postponed for eight days, at which time valid decisions can be rendered by as many members as there be present. This must be expressly stated in the summons to the meeting.

## ARTICLE 191

The Church-congregational Council performs these functions:

1) prepares the annual estimate of income and disbursements, and approves the final bill for various needs of the church congregation, and sends them to the Diocesan executive committee for final approval (art. 153, #5);

2) renders decisions concerning the mortgaging and alienating of Church-congregational property, and forwards them through the Diocesan executive committee for approval up to the sum of 2,000.00 dinars to the Patriarchal executive committee, and over that sum to the Patriarchal council;

3) renders decisions concerning the writing off of accounts due the Church-congregational which

cannot be collected from the creditor, and concerning the dispensing of expendible items of that property, and forwards them to the Diocesan executive committee, which decisions for writing off accounts to 50,000 dinars and of dispensing expendibles up to 100,000 dinars it approves; while with sums over those amounts it forwards with its opinion for approval to the Patriarchal executive committee;

4) renders decisions concerning the initiating or cessation of litigations, and of terms of settlement, and forwards them to the Diocesan executive committee which gives final approval up to value of 200,000 dinars, and over that sum forwards them on with an opinion to the Patriarchal executive committee for approval;

5) renders decisions of leasing and submits them for approval to the Diocesan executive committee, which gives final approval up to sum of 200,000 dinars, and over that sum forwards them with an opinion to the Patriarchal executive committee for approval;

6) renders decisions concerning the assessing of members of its church congregation for the needs of its church congregation, the diocese, and for the general needs of the Church;

7) with the approval of the appropriate diocesan authorities, decides upon the proposals of the church-congregational executive committee concerning the maintenance, renewal and building of churches, parish houses, church-congregational, fund, memorial bequest (foundation) buildings, and in general concerning the establishing of institutions in its jurisdiction;

8) establishes within the limits of this Constitution and directives of higher church authorities posi-

tions of its employees, and determines their benefits;

9) submits suggestions, petitions and proposals to the appropriate diocesan authorities concerning its needs;

10) in accordance with directives and orders of higher church authorities, takes care of the support of the rector and parish.

## ARTICLE 192

Should the church-congregational council not fulfill its duty, or not submit to the orders of established authorized authorities, or over-step the limits of its sphere, and in case that such disorder arise in its midst to hinder the proper functioning of the council, the Diocesan Executive Committee, upon a grievance or by official duty, directs that an investigation of the matter be made.

The Diocesan executive committee may exclude the guilty parties from the Church-congregational council, and if necessary, suspend further activity of the Church-congregational council, transferring such activities to the Church-congregational executive committee. This temporary status may continue until the Diocesan Executive Committee becomes convinced that proper and regular functioning of the Church-congregational council can be renewed.

## ARTICLE 193

In case of absolute necessity, the filling of vacancies in the Church-congregational council up to one third of the total number of members is conducted by rotation under the chairmanship of persons designated by the Diocesan Executive Committee. The Diocesan executive board is authorized to give approval for this.

## b) CHURCH-CONGREGATIONAL EXECUTIVE COMMITTEE

### ARTICLE 194

The Church-congregational executive committee is comprised of from 6 to 12 members, according to the number of members in the Church-congregational council, and other conditions in the church congregation.

The president and vice-president of the Church-congregational council are members of the Church-congregational Executive Committee in the same capacity ex-officio, as also the rector, i.e. the eldest head of the church, who is a member of the Church-congregational council. The remaining members of the Church-congregational executive committee and a like number of alternates are elected by the Church-congregational council for a term of six years from among its own midst.

### ARTICLE 195

The number of members for Church-congregational executive committees for the various church congregations is determined by the Diocesan executive committee.

### ARTICLE 196

The Church-congregational executive committee elects the secretary, treasurer, and the necessary number of sextons, if need be also from persons not in their midst.

### ARTICLE 197

Persons who are in the degrees of relationship as stated in ARTICLE 75 cannot be elected to serve at the same time in the Church-congregational Executive Committee.

### ARTICLE 198

An elected member of the Church-congregational executive committee continues to remain a member of the Church-congregational council.

## ARTICLE 199

The Church-congregational executive committee meets at the invitation of the president in sessions at least once every two months, and more often according to necessity.

Upon the demand of a majority of the members, the president is obliged to summon a meeting of the Executive committee. In that demand, the subject must be explicity stated as to why the meeting should be called.

## ARTICLE 200

The Church-congregational executive committee may render valid decisions if a majority of the members are present at the meeting. Decisions are rendered by simple majority of votes of members present. In case of tie, the president's vote decides.

## ARTICLE 201

The duties of the Church-congregational Executive Committee are mainly these:

1) to preserve and defend the dignity and interests of the church and church-congregation;
2) to assist ecclesiastical authority in the religio-moral and cultural-educational rearing and training of the adherents of the Orthodox Church, especially the youth, in the preservation and nourishment of beneficial and nice customs, as also in the uprooting of bad and harmful habits;
3) fulfills the decisions of the Church-congregational council and directives of the authorized church authorities;
4) cooperates with the Rector in the compilation of church electoral lists;
5) hires and dismisses church-congregational official personnel, except the church cantor and the church-sexton (ARTICLE 176 point 16);

6) watches that those who enjoy the use of the church goods keep them in good order;

7) compiles an inventory of expendible and real estate properties, submitting one copy every year to the Diocesan executive committee;

8) governs the church property and sees to its advancement; exercises care that the properties of funds, memorial bequests (foundations) are used in accordance with their designated purposes;

9) secures the legal documents dealing with the right of possession of church real estate, and insures them against fire, and where necessary against other catastrophies;

10) in agreement with the rector, to care about the securing of necessary means for the coducting of divine worship, the maintenance, securement and decoration of churches, parish houses, belfrys, the cemetery and landscape; takes care about obtaining the means and preparing estimates and plans, which are submitted to the Church-congregational council, and then to the diocesan authorities for final approval, for the building and erecting of new churches, parish houses and other church-congregational structures;

11) takes care of the regular payment of taxes and other obligatory assessments required by law;

12) examines every three months, and more often if necessary, the accounts of the treasurer and tutors, also of other accountable persons, and endeavors to see that they fulfill their duties accurately and conscienciously;

13) compiles and proposes to the Church-congregational council the annual estimates and receipts and disbursements, and also collects and compiles the final accounts, and submits them with

inventories to the Church-congregational council for examination and further action;

14) makes suggestions, petitions and proposals to higher church authorities concerning all its needs;

15) submits at the end of the year a report of its work to the Church-congregational council, and

16) takes care that surplus funds do not lie dormant in the church treasury, but that they be used in the most advantageous and secure manner for the interests of the Church; the amount of the sum that can be kept in the treasury is decided by the board itself according to its needs.

### ARTICLE 202

In cases when the Church-congregational council deliberates concerning accounts or accountableness because of some irregularity or carelessness of the Church-congregational executive committee, this committee is obliged to give the Council all necessary explanations, but it cannot participate or vote in the bringing of decisions dealing with these subjects. In such a case the honorary president of the Church-congregational Council presides.

If the Church-congregational council is deliberating on the accountableness because of some irregularity or neglect of the Church-congregational executive committee in whose work the rector participated, and did not at that time take exception by giving his opinion, the rector cannot preside at that meeting of the Council, but in such a case the oldest member in age of the council presides.

## c) REGULATIONS COMMON TO BOTH THE CHURCH-CONGREGATIONAL COUNCIL AND EXECUTIVE COMMITTEE

### ARTICLE 203

The Rector, i.e., the head of the church, is obliged to actively cooperate with the members of the Church-congregational council and committee in all activities (of an

administrative and material nature) in his church congregation, and is co-responsible with them for all irregularities, if he did not in a given case expressly state his opinion against the irregular decisions and activities, and did not state a grievance to higher authorized church authorities.

The Rector (head of the church) is privileged to file a grievance with the higher authorities within 14 days against decisions of the Church-congregational council and Church-congregational committee which might be rendered contrary to church regulations or harmful to the religious and moral interests of the church, or against decisions in which his explained suggestions for satisfying the needs of the churches, cemeteries and other consecrated places were ignored.

## ARTICLE 204

Service as members of the Church-congregational council and Church-congregational executive committee is honorary and is rendered without remuneration.

If a member of the Church-congregational executive committee should perform the duties of secretary or treasurer, he could be given in accordance with the amount of work a special honorarium for the performance of these duties, with the approval of the Diocesan Executive Committee.

## ARTICLE 205

The Diocesan executive committee may, upon charges or by official duty, exclude from the Church-congregational council and executive committee any member who:

a) loses one of the conditions required by the regulations of this Constitution for membership in the Church-congregational council or executive committee;

b) neglects his duties and is absent from meetings three times in a row without legitimate excuse;

c) does not submit to directives of higher church authorities and hinders the execution of valid decisions,

## ARTICLE 206

If the Church-congregational executive committee should neglect its duties, or should it over-extend its authority, or not fulfill orders and directives of authorized higher church authorities, or finally, should there arise in it such divisions and disorders which hinder the successful and correct regular performance of work, and should the Church-congregational council not take measures against such work, the Diocesan executive board has the right to dissolve the Church-congregational council and the executive committee, and to appoint a special temporary trusteeship of from 5 to 12 members.

Similarly, it can dissolve the Church-congregational council and the executive committee and appoint a temporary trusteeship in the event that the number of members in these bodies becomes inadequate for its regular work.

The appointed temporary trusteeship shall conduct all activities of the Church-congregation until the election of a new Church-congregational council and executive committee.

The motion for dissolution of the Church-congregational council and committee and the appointing of a temporary trusteeship is submitted by the Rector, i.e., the head of the church, to the bishop's district deputy, who with his opinion submits the same to the Diocesan executive committee for decision. The decision of the Diocesan executive committee on this matter is final, against which there is no appeal.

The Diocesan executive committee may by official duty dissolve the Church-congregational council and church-congregational executive committee and appoint a trusteeship.

The Rector, i.e., the eldest head of the church, is always a member of the temporary trusteeship.

### ARTICLE 207

The Diocesan Executive Committee is authorized to send its representative with necessary directives to any meeting of the Church-congregational council or Executive Committee meeting, both regular and special.

## 13. THE SUPERIOR AND BROTHERHOOD OF MONASTERIES

### ARTICLE 208

Every priest-monk and monk (nuns) must belong to the brotherhood of one monastery.

All priest-monks and monks of the Serbian Orthodox Monasteries are under the direct control and authority of the monastery Superior; however, priest-monks and monks, who with the knowledge and consent of the jurisdictional Bishop perform church duties and live outside their monastery, are subordinated to the direct jurisdiction of the respective Bishop, but at all times remain in spiritual communion with their monastery. If they transfer to another diocese, they become attached to one of the monasteries located therein.

The Diocesan Bishop is the Supreme Superior and supervisor of all male and female monasteries and monastic brotherhoods in his diocese.

### ARTICLE 209

In a monastery, where there are at least 3 members of the brotherhood, the superior governs with the help of the brotherhood.

All priest-monks and monks, both those who live in the monastery and those who because of their church duties

live outside the monastery, are members of the monastery brotherhood.

ARTICLE 210

The superior of the monastery is the representative, direct governing and controlling authority of his monastery and brotherhood, the guardian of church and monastic rules, and executor of orders from higher church authorities.

The direct assistant and substitute of the Superior is the deputy.

ARTICLE 211

In the monastery which has more than four brothers, the brotherhood under the chairmanship of a representative of the Diocesan Bishop, nominates two candidates for each post of Superior and deputy, of which the diocesan Bishop appoints one Superior and one deputy.

In monasteries with less than four brothers, the superior and deputy are appointed by the Bishop.

In case of necessity, the Diocesan Bishop may appoint a temporary superior. He also dismisses him. A permanent superior can be dismissed from his post or transferred upon his explained petition, by his consent or judgment, except in the cases stated in ARTICLE 220.

ARTICLE 212

The Superior is obliged to live with the brotherhood and perform his duties according to the monastery Constitution. Besides his sphere of duties set forth in ARTICLE 213 (a special regulation) he performs these duties:

1) prepares for the various monastery needs an annual estimate of receipts and disbursements and compiles the concluding accounts and sends them for review to the Diocesan executive Committee, which approves the same in agreement with the Diocesan ecclesiastical court.

2) renders decisions concerning the alienating and mortgaging of monastery property and forwards them to the Diocesan executive committee, which in conjunction with the Ecclesiastical court forwards them with an opinion for approval to the Patriarchal executive committee if amount is up to 2,000.000 dinars; and over that amount to the Patriarchal council; The Partiarchal executive committee decides thereupon in agreement with the Holy Synod of Bishops, while the Patriarchal council by agreement with the Holy Assembly of Bishops;

3) decides concerning the writing off of debts which cannot be collected, and of disbursing of expendible items, forwarding them to the Diocesan executive committee – for debts up to 50,000 dinars; and the disbursement of expendibles to the amount of 100,000 dinars; while sums over that amount to the Patriarchal executive committee through the Diocesan executive board which forwards such decisions with its opinion; The Diocesan executive committee decisions are made by agreement with the Diocesan ecclesiastical court and the Patriarchal executive committee decisions in agreement with the Holy Synod of Bishops;

4) Renders decisions concerning the initiating or cessation of litigations, and of conditions of settlement, forwarding them for approval, to the Diocesan Executive Committee for sums up to 200,000 dinars, and over that amount to the Patriarchal executive committee through the diocesan executive committee which forwards them with its opinion; The Diocesan executive committee decides on such issues in agreement with the Diocesan ecclesiastical court, while the Patriarch executive committee decides upon such

issues in agreement with the Holy Synod of Bishops.

5) renders decisions concerning the taking and giving under lease monastery properties, submiting them for approval: to the Diocesan Executive committee for values up to 200.000 dinars, and over that sum to the Patriarchal executive committee through the Diocesan executive committee, which forwards them with an opinion. The Diocesan executive committee decides such issues in agreement with the Diocesan ecclesiastical court, and the Patriarchal executive committee decides such issues in agreement with the Holy Synod of Bishops;

6) is concerned with the advancement of monastery properties, and that necessary and possible crafts and husbandry be developed.

ARTICLE 213

A special directive for the internal and external monastery life is prescribed by the Holy Assembly of Bishops.

## III. CHURCH OFFENSES AND PENALTIES

ARTICLE 214

Offenses, according to canons and church regulations, which are investigated and judged by the competent church authorities are as follows:

a) Clergyman of secular and monastic order:

1. Offenses against faith and church teachings as well as church order;

2. Conduct which is unbecoming to priestly rank and position:

3. Failing to fulfill or careless performance of official priestly duties and lawful orders of the higher church authorities:

4. Insults and slanders which one clergyman does to another one:

5. Extortion of the exhorbitant fee for officiation;

6. Discussion and criticism in preaching and pronouncements of laws and orders of competent authorities and their actions.

## ARTICLE 215

Offenses are investigated and judged by official duty or upon the basis of submitted charges.

## ARTICLE 216

The Church penalties are these:

a) for ordained persons of both branches:

1) warning:

2) admonishment: (rebuke)

3) penance as decreed:

4) transfer to another place of service:

5) temporary suspension of sacerdotal functions, maximum of one year:

6) loss of parish service, i.e., other callings in the Church;

7) lifetime suspension of sacerdotal functions;

8) deprival of Holy Orders—unfrocking;

9) dismissal from Holy Orders and exclusion (excommunication) from the church community; and

10) dismissal from monasticism;

b) for the laity:

1) temporary deprival of various rights and honors in the church;

2) exclusion (excommunication) from the church community for a fixed period of time; and

3) final exclusion (excommunication) from the church community.

## ARTICLE 217

For ordained persons of both branches, the penalties of warning, rebuke, and penance up to fifteen days, and suspension from sacerdotal functions up to thirty days are pronounced by the diocesan Bishop, while penalties of transfer to another place, suspension of sacerdotal function for more than thirty days and other penalties are pronounced only by the appropriate Ecclesiastical Court. For the laity, the penalty of temporary deprival of various rights and honors in the church are pronounced by the jurisdictional Bishop, while the remaining penalties the jurisdictional Diocesan ecclesiastical court.

Penalties decreed by the diocesan Bishop are effective immediately (art. 108, pt. 19), and penalties decreed by the Diocesan Ecclesiastical court are subject to review and judgment of the Supreme Ecclesiastical Court according to ARTICLE 79.

## ARTICLE 218

No one can be punished with any church penalty without prior hearing.

## ARTICLE 219

Should a complaint be submitted against a clergyman for an offense which caused scandal among the people and is shameful for the clerical ranks, diocesan bishop may such a clergyman, immediately after the commencement of investigation, suspend from officiation until the verdict of the church court is rendered.

Bringing the decision of suspension of officiation, diocesan bishop may order that such clergyman be temporarily remunerated a one half of his salary.

Matters of this kind must be considered as urgent and the church court is obligated to make a decision within a period of one year.

ARTICLE 220

In a case of charge of misappropriation of funds, the accused may be removed from the administration by the diocesan bishop until his offenses are finally investigated and judged.

ARTICLE 221

Penalties of suspension from sacerdotal functions, regardless of duration, draw with them a cut in benefits to one half for the period of time the penalty is in effect. The substitute becomes the beneficiary.

ARTICLE 222

Penalties foreseen under points 4 to 6 inclusive in ARTICLE 216, imply the halting of advancement in rank and benefits for a maximum of three years, according to the decision of the church authority which pronounced judgement.

This halting of advancement commences also when a priest is punished according to ARTICLE 216, points 1 through 3 in two consecutive years.

ARTICLE 223

Clergy who are in the service of the church, should they be suspended or ordered to temporary suspension of officiation, cease to perform functions of his office during pendency of suspension, and for all that time receive half of his remuneration.

ARTICLE 224

Regulations concerning church offenses and penalties are applicable also to retired ordained persons, insofar as they can be applied.

## IV. CHURCH EDUCATION

### ARTICLE 225

The Serbian Orthodox Church exercises care over the nourishment and development of ecclesiastical-educational activities and church art, and towards that end establishes and erects the necessary schools and foundations.

### ARTICLE 226

For the training of the Serbian Orthodox clergy of both branches in the Serbian Orthodox Church, there exist higher and lower theological and monastic schools. These schools are established by the Holy Assembly of Bishops in agreement with the Patriarchal council, and closes them by its own decision.

The Serbian Orthodox Church provides for the teaching of religion in the elementary, middle and technical schools.

### ARTICLE 227

Every Theological and monastic school has, where possible, its own dormitories.

### ARTICLE 228

Only persons of the Orthodox faith who have the prescribed qualifications can be instructors (teachers) in the Orthodox Theological Faculty, in theological and monastic schools.

Professors of theological courses in seminaries and monastic schools must be either in Holy Orders or of Monastic orders.

### ARTICLE 229

Lectures at the Orthodox Theological Faculty of the University must be in agreement with the teachings of the Orthodox Christian Church. Concerned with this is the Holy Synod of Bishops, as well as with the religious

suitability of the candidate for instructor of this school at the time of his appointment.

ARTICLE 230

The curriculum plan and program of lectures in theological and monastic schools is prescribed by the Holy Assembly of Bishops.

ARTICLE 231

Rectors of seminaries and directors of monastic schools are appointed by the Holy Assembly of Bishops, and the teaching personnel is elected by the Holy Synod of Bishops upon the recommendation of the diocesan Bishop; the first and the latter are relieved from duties or returned by the Holy Synod of Bishops upon the recommendation of the diocesan Bishop.

ARTICLE 232

Theological and monastic schools are under the supreme control and direction of the Holy Synod of Bishops, and under the direct control of the jurisdictional diocesan Bishop.

The jurisdictional Bishop, as the direct supervisory authority, has the right to penalize by warning and rebuke all teaching personnel and other official personnel because of unconscientious work or unbecoming behavior. In case of more grevious offense, the diocesan Bishop may temporarily remove the official from his duties and immediately inform the Holy Synod of Bishops of this for further action.

ARTICLE 233

Regulations dealing with theological and monastic schools are prescribed by the Holy Assembly of Bishops.

## ARTICLE 234

Concerning the founding and ordering of other church-educational schools and foundations, the Holy Assembly of Bishops in agreement with the Patriarchal council is the competent authority for general institutions for the whole church; for diocesan, church-congregational and monastic institutions, the diocesan Bishop in agreement with the diocesan, i.e., the church-congregational council, i.e., the monastery superior and brotherhood, — all with the approval of the Holy Synod of Bishops and the Patriarchal executive committee, if the maintenance of these schools and foundations falls upon the burden of estimates of income and disbursements for general church needs.

# V. CHURCH PROPERTIES

## ARTICLE 235

The Serbian Orthodox Church independently governs and freely directs church properties, church funds and memorial bequests (foundations), as also its own incomes within the limitations of canonical regulations and this Constitution.

## ARTICLE 236

All annual disbursements and incomes of the Serbian Orthodox are foreseen in the annual estimates of income and disbursements, which are compiled separately according to general or particular needs which must be satisfied.

For the general needs of the Serbian Orthodox Church, the Patriarchal Executive Committee determines the estimate of general income and disbursement, and the concluding accounts it submits to the Patriarchal council for approval.

For the particular needs of the dioceses, church congregations and monasteries, the organs of these bodies competent for this by this Constitution, compiles the estimate of disbursements and incomes of the respective dio-

cese, church congregation or monastery. Estimates of the dioceses are approved by the Patriarchal Executive Board, and estimates for church congregations and monasteries are approved by the Diocesan Executive Committee.

The concluding accounts of the diocese are submitted by the Diocesan Executive Board for approval to the Patriarchal executive committee in accordance with Article 101, point 4, and Article 153, point 3, and the concluding accounts of church congregations and monasteries are approved by the Diocesan Executive Committee.

ARTIGLE 237

The disbursements and income of Church funds and of Church foundations and institutions are provided for in the respective estimates, and consequently under whose jurisdiction comes the handling and governing of the same, as well as the care for their needs and uses.

The incomes and disbursements of church memorial bequests (foundations) are also foreseen in the respective estimates, if the disbursements are designated for the needs of the Church.

ARTICLE 238

The organs which are authorized to compile or submit the annual estimates of disbursements and income are also obliged to prepare the annual closing accounts, which they submit for review and dispensation to the authorities under whose jurisdiction the matter belongs.

ARTICLE 239

The Directors for the Church budgets are as follows:

For the budget of general disbursements and incomes of the Serbian Orthodox Church, the President of the Patriarchal Executive Committee, or his deputy; For the diocesan budget, the President of the Diocesan Executive Committee, or his deputy; For the budget of the Church

Congregations, the President of the Church-Congregational Executive Committee; and for the budget of the monasteries, the Superior of the monastery.

The Directors for the budget of the general needs of the Serbian Orthodox Church, and the Directors of the diocesan budgets, can transfer their right of directorship to subordinate organs for sums up to 20.000 dinars.

## ARTICLE 240

Submitters of accounts are all those organs and persons to whom by this Constitution or regulations and other rules are entrusted the handling of church money, articles, and material.

## ARTICLE 241

The Directors and submitters of accounts are materially responsible for their work which might be contrary to church-legal rules.

## ARTICLE 242

The following are the sources for covering the disbursements of the Serbian Orthodox Church:

1) Incomes from Church and Monastery benefices, temples, funds, memorial bequests, and from various church foundations and institutions;

2) From church taxes;

3) Incomes from securities;

4) Assessments upon church congregations and monasteries;

5) Voluntary donations, gifts and bequests.

## ARTICLE 243

The General needs of the Serbian Orthodox Church which are foreseen in the estimate of general disbursements and incomes, are met with:

1) Incomes from general Church benefices and from Church institutions of a general character;

2) With income from Church taxes mentioned in (Article 242, part 2), in-so-far as they are prescribed for general needs;

3) With incomes from sources foreseen in (Article 242, part 3).

4) With incomes from Church funds and memorial bequests, and also from special incomes from voluntary donations, gifts and bequests, in-so-far-as they are designated for general needs;

5) Incomes from special assessments upon church congregations, monasteries and dioceses;

6) Incomes from church foundations and institutions.

ARTICLE 244

The particular needs of the dioceses shall be met:

1) From incomes from diocesan benefices;

2) From incomes from church funds, memorial bequests and incomes from diocesan institutions and foundations, and also from incomes from voluntary donations and bequests, in-so-far-as they are designated for diocesan needs;

3) From incomes from special assessments upon church congregations and monasteries.

ARTICLE 245

The particular needs of the church congregations shall be met:

1) From incomes from the temple and from church-congregational benefices and institutions;

2) From incomes from church-congregational funds, memorial bequests, and other institutions, from voluntary donations, gifts and bequests, in-so-far as they are designated for the needs of the church-congregation, and

3) From incomes from voluntary assessment upon its members.

## ARTICLE 246

The particular needs of monasteries shall be met:

1) From incomes from their temples and benefices;

2) From incomes from their workshops and handicrafts;

3) From incomes from their funds, memorial bequests and institutions and also from incomes from voluntary donations, gifts and bequests;

4) From incomes derived by service to parishes (Article 170).

## ARTICLE 247

Church benefices are those real estate and personal properties which are the possessions of the Church as the general property of the Serbian Orthodox Church, or which are the possessions of the particular dioceses, monasteries, church congregations, temples, memorial foundations, independent institutions, or such funds.

The General benefices of the Church are considered Patriarchal benefices; particular benefices are considered Diocesan, Episcopal, Church-Congregational, specific Churches, and Monastery benefices, which serve the particular needs of the Dioceses, i.e., the Bishops, Rectors, Deacons, church officials and monasties.

## ARTICLE 248

Church benefices and incomes derived therefrom are used for the general or particular needs of the Church, and cannot be used for any other purpose.

ARTICLE 249

Real estate church benefices must have legal documents of ownership.

ARTICLE 250

Accurate and prescribed inventories must be regularly kept for all church benefices, which are compiled by those authorities and organs which directly govern these benefices.

ARTICLE 251

Church benefices are insured against damage from fire, theft, and storms of the elements, in accordance with the regulations of the Patriarchal Executive Committee.

ARTICLE 252

Church real estate property, which is given with a specific purpose, (Memorial Bequests, Bequests, etc.), cannot be mortgaged nor alienated, if the donor has specifically forbidden this.

ARTICLE 253

Monasteries may associate economically for a more rational development of the contemporary economy of its property, and they can establish their workshops with the approval of authorized diocesan authorities.

ARTICLE 254

The Patriarchal Council prescribes the manner of governing, handling and use of church benefices, as also the manner of supervision and control over those benefices.

ARTICLE 255

The Patriarchal Executive Committee renders the final decision concerning all those questions dealing with church properties which are not by this Constitution assigned to the jurisdiction of any church authority.

ARTICLE 256

Serbian Church Funds are those which were established by or the Serbian Orthodox Church, or her component parts, foundations and institutions, or which may be established with the designated purpose for the general needs of the Serbian Orthodox Church or for the particular needs of her component parts, foundations and institutions.

ARTICLE 257

Serbian Church memorial bequests (foundations) are those founded by particular benefactors, or which may be founded with a specified purpose for religious, church-educational, benevolent or other needs of the Serbian Orthodox Church, or for the particular needs of her component parts, foundations and institutions. Likewise, Church memorial bequests are those which are not designated for the Church needs and aims, but are entrusted to the governing and handling of Church authorities, foundations and institutions.

ARTICLE 258

For every church fund, and every church memorial bequest (foundation) there must exist By-Laws, in which is designated the property, its intention, the manner of its governing, use and control, and also the manner in which it is represented before the authorities.

The founding of Funds and acceptance of memorial bequests (foundations), and also their By-Laws, are approved by the Patriarchal Executive Committee.

In-so-far as there are no By-Laws for particular funds and memorial bequests (foundations), the Patriarchal Executive Committee shall prescribe them.

ARTICLE 259

For the particular needs of the Church for furthering the Orthodox Faith there exists the Synodal Fund, which is governed by the Holy Synod of Bishops.

In the estimate of general disbursements and incomes of the Serbian Orthodox Church, each year the necessary credit of proceeds assigned to the Synodal Fund must be foreseen, which cannot be less than 1% of the totally foreseen incomes for the respective budget year.

## ARTICLE 260

All Church Funds and memorial bequests (foundations) serve only those purposes for which they are intended.

The intentions of existing Funds and Memorial Bequests (foundations) can be extended to cover the same needs in the entire Serbian Orthodox Church and of her components parts. Decisions concerning this are made by the Patriarchal Council upon recommendation of the Patriarchal Executive Committee, and in agreement with the Holy Assembly of Bishops.

## ARTICLE 261

The intention of Funds and memorial bequests (foundations) can be, by exception, changed only if the intention becomes impossible to realize, or if the need ceased to exist for which it was intended.

Likewise, if its holdings decrease because of various monetary changes so that it becomes inoperable, the fund or memorial bequest shall be consolidated with others having similar intentions, but with the terms that the names of the founders shall be completely preserved. Of such matters the Patriarchal Executive Committee shall submit an explanatory recommendation, which shall be decided upon by the Patriarchal Council, by agreement with the Holy Assembly of Bishops.

For Funds and Memorial Bequests attached to church congregations and dioceses, the recommendation is submitted to the Patriarchal Executive Committee by the Diocesan Executive Committee.

## ARTICLE 262

For official actions of ecclesiastical authorities, bodies and organs, both in the hierachal and self-governing spheres, only those taxes are paid to the benefit of the Serbian Orthodox Church which are prescribed in a separate By-Laws by the Patriarchal Council in agreement with the Holy Assembly of Bishops.

## ARTICLE 263

Decisions concerning the granting of dispensations to church congregations, monasteries and dioceses, for the general needs of the Church are rendered by the Patriarchal Council in agreement with the Holy Assembly of Bishops (Article 69—Part 24, and Article 243—Part 5). For particular diocesan needs such decisions are rendered by the Diocesan Council (Article 141—part 3, and Article 244—part 3), which is approved by the Patriarchal Executive Committee in agreement with the Holy Synod of Bishops.

For particular needs of church congregations, decisions made concerning the assessing of members of the church congregation by the Church-Congregational Council (Article 191—part 6, and Article 245—part 3) are submitted for approval to the Diocesan Executive Committee.

## ARTICLE 264

At the seat of the Patriarchal Executive Committee is the governing chancery, which performs the governing affairs of the Church self-government according to the directives and under the supervision of the Patriarchal Executive Committee and under the supreme supervision of the Patriarch.

The Governing Chancery has these departments:

General—Economic—and Financial

By regulation which is brought about by the Patriarchal Council, these offices shall be rearranged according to financial conditions.

ARTICLE 265

The Means of the Church may be used to establish institutions, associations, and workshops for the making of candles, church utensils, and other necessary articles for the church, as also a printing shop, book-bindery, etc.

The use of candles in the church depends upon the approval of church authorities.

Special church stores may be established to provide the faithful with these various articles.

ARTICLE 266

Members of the ecclesiastical-heriarchical and church-self governing bodies and organs, excepting those for whom this Constitution otherwise provides, receive a per diem during the time of their work, i.e., reimbursement for traveling expenses, from the church-self governing means, in accordance with the By-Laws which are prescribed by the Patriarchal Council in agreement with the Holy Assembly of Bishops. The same applies in cases when church dignitaries, and other officials travel on official business away from the place of their residence.

## VI. PROVISIONAL INSTRUCTIONS AND CONCLUDING ORDINANCES

ARTICLE 267

Until such time that the material means for the maintenance of the bodies and organs of the Serbian Orthodox Church be assured in accordance with (Article 90) of this Constitution, the Patriarch, the central appertaining authorities of the Patriarchate and their personnel (offices and personnel of the Holy Synod of Bishops, the Patriarchal Executive Committee and the Supreme Ec-

clesiastical Court), as also the seminaries and monastic schools, fall upon the burden of the central treasury of the Patriarchate; The Bishops, Diocesan Ecclesiastical Court, Diocesan Executive Committee and their clerks fall upon the burden of the Diocesan treasury; rectors, deacons, and church-congregational clerks, fall upon the burden of the church-congregational treasury, i.e., of the parish, and the brotherhood of the monastery and its servants upon the burden of the monastery treasury.

## ARTICLE 267

Contributions for retirement insurance of Bishops, priests, church-hierarchical and church self-governing clerks are paid in accordance with legal regulations by those bodies which support them. A special regulation concerning this shall be issued by the Holy Synod of Bishops in agreement with the Patriarchal Executive Committee.

The Benefits of service personnel of the church appertaining jurisdictions must be uniform, the amount be regulated by the Holy Synod of Bishops in agreement with the Patriarchal Executive Committee.

## ARTICLE 268

When this Constitution becomes effective, all laws, directives, and other regulations cease to be valid which are contrary to this Constitution.

## ARTICLE 269

The changes and amendments in this Constitution of the Serbian Orthodox Church of November 16th, 1931, were made by the Holy Assembly of Bishops of the Serbian Orthodox Church; and become effective on the day of their public announcement in the "Glasnik", the official journal of the Serbian Patriarchate, with the condition that they be presented at the appropriate time to the

Patriarchal Council through the Patriarchal Executive Committee.

* * *

From the meeting of the Holy Assembly of Bishops held in Belgrade, on the 6/19 day of May, 1947—ACNo.—46/Min. of 1947.

President
Holy Assembly of Bishops
ABM and SERBIAN PATRIARCH
GAVRILLO, s.r.

## DECISIONS OF THE HOLY ASSEMBLY OF BISHOPS RELATIVE TO CERTAIN PRESCRIPTIONS OF THIS CONSTITUTION

1. Increasing Of The Number Of Members Of The Diocesan Council Of The Archbishopric Of Belgrade-Karlovao.

—The Holy Assembly of Bishops, under ACno. 51/min. 33 of 1948, adopted the decision of the Holy Synod of Bishops no. 2540/min. 683 of 1947, by which the number of members of the Diocesan Council of the Archbishopric of Belgrade-Karlovao, be increased in exception to regulation of (Article 137) of the Constitution, so that in the same there be admitted from the Episcopal District of Belgrade, eight ordained, and eight lay persons, and from the Episcopal District of Vracar-Grocanao, three ordained, and three lay persons.

2. The Czech-Moravian Diocese in Czechoslovakia, be ceded to the jurisdiction of the Russian Orthodox Church.

—The Holy Assembly of Bishops under ACno. 24/min. 28 of 1948, rendered the decision by which the Czech-Moravian Diocese, be ceded to the jurisdiction of the Russian Orthodox Church.

3. The Appointment and Transfer of Permanent Parish Priest.

—The Holy Assembly of Bishops under ACno. 44/min. 57 of 1952, rendered the following decision:

"No one can be installed as permanent rector with a concourse in accordance with (Article 166) of the Church Constitution".

"A permanent parish priest, if he be transferred by his own request to another parish without concourse, loses permanence status".

4. The Converting of Convent Monasteries into Male Monasteries and the Reverse.

—Relative to (Article 30 and 32) of the Constitution, the Holy Assembly of Bishops under ACno. 7/min. 40 of 1954, rendered the following decision:

"The converting of convent monasteries into male monasteries and male monasteries into convents is conducted by the Diocesan Bishops, who informs the Holy Synod of Bishops informations sake".

"The permanent superior of either effected upon the converting of monastery lose their permanence".

5. The Abolishment of the Diocese of Budimlje-Polim.

—The Holy Assembly of Bishops under ACno. 44/min. 70 of 1956, rendered this decision:

"On the basis of (Article 16) of the Constitution of the Serbian Orthodox Church, the Diocese of Budimlje-Polim, is Abolished."

"Those parts from which this Diocese was comprised are to be returned and annexed to those Dioceses from which they were taken at the time of the formation of this Diocese, to wit: To the Diocese of Dabro-Bosnia, are returned the former counties of: Pljevalj, Novovaros, Priboj, and Milesev; To the Diocese of Crna Gora-Primorje, the former counties of: Andrijevo to the mountain of Tresnjevik, with the exposition of Plav and Gusinje, Beranska, with the exposition of Rozaj and Bjelopolje; To the Diocese of Raska-Prizren: the county of Sjenicka".

# In the Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-867.

TOM SIMICH, *et al.*,
*Petitioners,*
vs.
DOBROSAV MILISAVLJEVIC, *et al.*,
*Respondents.*

TOM SIMICH, *et al.*,
*Petitioners,*
vs.
ST. SAVA SERBIAN EASTERN ORTHODOX CHURCH OF CLEVELAND, OHIO,
*Respondent.*

TOM SIMICH, *et al.*,
*Petitioners,*
vs.
ST. SAVA SERBIAN EASTERN ORTHODOX CHURCH OF CLEVELAND, OHIO, *et al.*,
*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

## BRIEF FOR RESPONDENTS IN OPPOSITION.

STANLEY E. LLOYD,
1405 National City Bank Building,
Cleveland, Ohio,
*Counsel for Respondents.*

W. P. STRANGWARD,
STRANGWARD, MARSHMAN, LLOYD & MALAGA,
*Of Counsel.*

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-0647

## TABLE OF CONTENTS.


OPINIONS BELOW 1

QUESTION PRESENTED 2

COUNTER STATEMENT OF FACTS 2

ARGUMENT 11

I. Lack of Jurisdiction 11

A. No "Final Judgment or Decree" 11

B. Existence of Independent and Adequate Non-Federal Grounds 12

II. The Decision Below Is Clearly Correct 18

The heart and core of this litigation is the right to the possession, use and control of the real and personal property of an Ohio church corporation 18

CONCLUSION 27

APPENDIX:

Decisions of Court of Appeals of Cuyahoga County, Ohio in Related Cases:

Opinion in *Savko Jovanovic, et al. vs. Tom Simich, et al.* 28

Journal Entry in *Savko Jovanovic, et al. vs. Tom Simich, et al.* 39

Opinion in *St. Sava Serbian Orthodox Church of Cleveland, Ohio vs. Milan Naperta, et al.* 41

Journal Entry in *St. Sava Serbian Orthodox Church of Cleveland, Ohio vs. Milan Naperta, et al.* 46

Journal Entry Nunc Pro Tunc in *St. Sava Serbian Orthodox Church of Cleveland, Ohio vs. Milan Naperta, et al.* 50

Pertinent Portions of Church By-Laws 52

## CITATIONS.

### Cases.


*Bostwick v. Brinkerhoff*, 106 U.S. 3 (1882) 12

*Enterprise Irrigation Dist. v. Farmer's Mutual Canal Co.*, 243 U.S. 157 (1917) 15

*Epperson v. Arkansas*, 393 U.S. 97 (1969) 26

*Everson v. Board of Education*, 330 U.S. 1 (1947) 25, 26

*Fox Film Corp. v. Muller*, 296 U.S. 207 (1935) 13

*Gospel Army v. Los Angeles*, 331 U.S. 543 (1947) 12

*Hazeltine v. Central Bank*, 183 U.S. 130 (1901) 12

*Herb v. Pitcairn*, 324 U.S. 117 (1945) 13, 18

*Houston v. Moore*, 3 Wheat. 433 (U.S. 1818) 12

*Klinger v. Missouri*, 13 Wall. 257 (U.S. 1872) 13

*Leonard Ins. Agency v. Filles Motor Delivery*, 16 Ohio App. 2d 161, 242 N.E.2d 894 (1968) 17

*Market Street R. Co. v. Railroad Commission*, 324 U.S. 548 (1945) 12

*Maryland and Virginia Eldership of the Churches of God et al. v. Church of God at Sharpsburg*, 396 U.S. 367 (1970) 18, 19, 20, 21, 22, 23, 24

*Murdock v. City of Memphis*, 20 Wall. 590 (U.S. 1875) 13

*Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) 18, 21, 22, 23, 24

*Republic Natural Gas Co. v. Oklahoma*, 334 U.S. 62 (1945) 11, 12

*Rice v. Sanger*, 144 U.S. 197 (1892) 12

*Stadelman v. Key GMC Truck Sales*, 22 Ohio App. 2d 161, 259 N.E.2d 520 (1970) 17

*Union Mutual Life Ins. Co. v. Kirchoff*, 160 U.S. 374 (1896) 12

*Watson v. Jones*, 13 Wall. 679 (U.S. 1872) 24

*Zorach v. Clauson*, 343 U.S. 306 (1952) 26

**Constitution and Statutes.**

Constitution of the United States:

First Amendment 15, 25, 26

Fourteenth Amendment 15, 25

Ohio Revised Code:

Sec. 1702.13 6

Sec. 2311.041 17

28 U.S.C. 1257 11

**Miscellaneous.**

Boskey, *Finality of State Court Judgments Under the Federal Judicial Code*, 43 COLUM. L. REV. 1002 (1943) 11

*Henry v. Mississippi and the Adequate State Ground: Proposals for a Revised Doctrine*, 1965 SUPREME COURT REVIEW 187 18

Note, *Judicial Intervention in Dispute Over the Use of Church Property*, 75 HARV. L. REV. 1142 (1964) 26

Rules of Practice of the Supreme Court of Ohio, Rule II, Sections 2 and 3 14

# In the Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-867.

TOM SIMICH, *et al.*,
*Petitioners,*
vs.
DOBROSAV MILISAVLJEVIC, *et al.*,
*Respondents.*

TOM SIMICH, *et al.*,
*Petitioners,*
vs.
ST. SAVA SERBIAN EASTERN ORTHODOX CHURCH OF CLEVELAND, OHIO,
*Respondent.*

TOM SIMICH, *et al.*,
*Petitioners,*
vs.
ST. SAVA SERBIAN EASTERN ORTHODOX CHURCH OF CLEVELAND, OHIO, *et al.*,
*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

## BRIEF FOR RESPONDENTS IN OPPOSITION.

## OPINIONS BELOW.

In addition to the opinions below contained in the Petitioner's Appendices, Respondents have reproduced the unreported opinions and judgment entries of the Ohio Eighth District Court of Appeals in the original cases of *Savko Jovanovic v. Tom Simich, et al.*, and *St. Sava Serbian Orthodox Church of Cleveland, Ohio v. Milan Naperta, et al.* (Appendix pp. 28 to 51, *infra*).

## QUESTION PRESENTED.

The Respondents disagree with the statement of "Questions Presented" set forth on pages 3-4 of Petitioners' Brief.

The only Question presented on Petitioners' appeal is:

Where the members of an Ohio incorporated church have a substantial controversy over the identity of the governing body or bodies which exercise general authority within the church, can civil courts, in resolving property disputes inquire into the religious law and usage essential to the resolution of the controversy?

## COUNTER STATEMENT OF FACTS.

Respondents cannot accept the Statement of the Case as presented by Petitioners because a correct Statement of the Case materially affects the answer to the question presented by Petitioners.

Respondent Church Corporation is a non-profit Ohio Corporation, an independent and congregational type church, and owns the property which is the subject of this litigation. Its unqualified ownership has at all times been admitted by all parties.

About 1907, at a time when the so-called Mother Church and its hierarchy was not in existence, Americans of Serbian descent established a church in Cleveland, Ohio, where they could worship and follow the Christian religion and associated themselves with the Christian American Russian Eastern Orthodox Diocese. They established the church themselves with their own assiduous labor and without any help, financial or otherwise, from any hierarchy in Europe. The governments of most of the churches set up by the Serbs, in this country, were

democratic in principle and provided for local church affairs to be run by the majority vote of the members of the Church, meeting in general assembly, including the election of officers and the selection of a priest. This is well illustrated by Article II, paragraph 1, Section (B) of the *unanimously adopted* by-laws of the corporation (see Appendix p. 52, *infra*) which states that one of the purposes for which the organization is formed is to spread and foster love and respect for the Serbian Orthodox people, the people of the United States of America, the Constitution of the United States, and the democratic-American way of life.

The so-called Mother Church and its hierarchy only came into existence after the First World War, when what is now Yugoslavia was formed by the consolidation of three Balkan countries, Serbia, Croatia and Slovenia.

In 1927 the American Eastern Orthodox Churches of principally Serbian membership elected and sent to a National Conference delegates to form and write a Constitution for an independent Serbian Eastern Orthodox Diocese. Thereafter, the diocese became associated with the Serbian Eastern Orthodox Church in Belgrade, Yugoslavia as a separate and independent diocese.

Also, in 1927, the St. Sava Church of Cleveland withdrew from the Christian American Russian Eastern Orthodox Christian Diocese and voluntarily associated with the new Serbian Eastern Orthodox Diocese, which is now incorporated in Illinois and known as the Serbian Eastern Orthodox Diocese for the United States of America and Canada.

The unanimously adopted By-laws of the Cleveland Church Corporation specifically provide that it is associated with that incorporated diocese in Illinois and with no other organization.

The St. Sava Church of Cleveland has made no change in its association with the Illinois incorporated diocese and remains associated therewith as provided by its by-laws.

The Petitioners herein are a small minority who at the start of litigation herein were members of the Church Corporation, but have since refused to abide by the unanimously adopted corporate by-laws, have refused to support the St. Sava Church Corporation by the payment of the required dues, have abandoned the St. Sava Cleveland Church Corporation, and have joined with others who would now destroy the St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio and the Serbian Eastern Orthodox Diocese for the United States of America and Canada with which it has been associated for more than forty years.

Thus, the facts are clear that the individuals who are the Respondents herein are those who are loyal to the long established local incorporated Cleveland Serbian Eastern Orthodox Church and the Serbian Eastern Orthodox Diocese with which it has long been associated, while the Petitioners are the schismatics and constitute the breakaway faction.

It is a fact that there has been between persons who were members of the Church Corporation a very substantial controversy as to who are the true followers of the faith and further as to church policy, the resolution of which would require an inquiry into religious law and usage.

Original litigation involving the St. Sava Church Corporation of Cleveland, Ohio was the case of *Savko Jovanovic v. Tom Simich, et al.*, filed in October of 1963, being Cuyahoga County Common Pleas Case No. 790246.

The Second action filed was the case of *St. Sava Serbian Orthodox Church of Cleveland, Ohio v. Milan Naperta, et al.*, filed in March of 1964, and being Guyahoga County Common Pleas Court Case No. 795014.

Both these cases originally sought injunctive relief raising questions of corporate membership and control.

For the purposes of brevity we shall here refer to the two above captioned cases as the *Jovanovic* case and the *Naperta* case.

The *Jovanovic* case was first appealed on questions of law. The *Naperta* case was appealed on questions of law and fact.

On the 22nd day of March, 1966 the Court of Appeals, Tenth Judicial District, sitting for and in behalf of the Court of Appeals, Eighth Judicial District, wrote an opinion (unreported) in the *Jovanovic* case, and on the 7th day of April, 1966 it rendered its written decision (unreported) in the *Naperta* case. That opinion and the decision are, together with related journal entries, reproduced in full in the Appendix hereof for the convenience of this Honorable Supreme Court (Appendix pp. 28 to 51, *infra*).

In disposing of the *Jovanovic* and the *Naperta* cases the Ohio Court of Appeals after commenting as follows:

> "It is important at the outset to strongly state to both factions that the ecclesiastical controversy cannot be resolved in a court of civil law. This court is not in any respect passing upon the religious, ecclesiastical authority of any patriarch, bishop or other clerical or nonclerical person.
>
> On the other hand, St. Sava Serbian Orthodox Church of Cleveland, Ohio, is also a corporation organized under the laws of Ohio. The manner and procedure by which it carries on its corporate ac-

> tivities is controlled by the statutes of Ohio, the corporation's articles of incorporation and its regulations. *St. Sava has adopted a set of bylaws. This court can and will apply the civil law pertaining to corporations as established in Chapter 1702, Revised Code, and the regulations adopted by the corporation in its bylaws.*" Appendix p. 31, *infra*. (Emphasis added).

issued its mandate to the Cuyahoga County Common Pleas Court in Case No. 790,246 requiring that court to:

> (1) Grant a permanent injunction prohibiting the enforcement of the resolution of December 2, 1962, relating to the payment of funds in addition to regular dues, and the denial to petitioners and others similarly situated of their right to vote because of their failure to comply with that resolution,
>
> (2) Require the holding of an election of officers in accordance with the bylaws of the Church Corporation and the law of Ohio, such election to be held at such time as the Court of Common Pleas may determine to be appropriate.
>
> (3) Oversee, by a Master Commissioner or otherwise, (a) the preparation of a membership book as provided by Section 1702.13 Revised Code, (b) the determination of individual claims to be a member or for reinstatement as a member of the Church Corporation, and (c) the call of a membership meeting and the conduct of the election.
>
> (4) Hold such further proceedings as may be in accordance with law. Appendix, p. 40, *infra*.

In obedience to that mandate the Court of Common Pleas of Cuyahoga County determined the individual claims of persons to be a member or be reinstated as a

member of the Church Corporation, prepared a membership book as provided by Section 1702.13 Ohio Revised Code and called a membership meeting *in accordance with the bylaws of the corporation* to be held on March 26, 1967 for the purpose of electing, under the supervision of the court, the officers of the Church Corporation.

It was within a few days after the call for such meeting was issued by the Common Pleas Court that Petitioners, in an attempt to stop the election, filed a declaratory judgment action, originally styled "*The St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio (an Ohio non-profit corporation), and Tom Simich v. Dobrosav Milisavljevic, et al.*, Cuyahoga County Common Pleas Court Case No. 841,384 (Court of Appeals No. 30057). This was the first of the consolidated cases now before this Honorable Court. After filing that petition a motion was filed in Common Pleas Court by Petitioners requesting the court to delay the scheduled election therein on March 26th. This motion was denied, the election was held as scheduled, and on March 30, 1967 the Common Pleas Court issued its judgment and decree of election of officers.

The Respondent Church Corporation instituted an action on April 4, 1967 styled "*St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio v. Tom Simich, et al.*: Case No. 842626" in the Court of Common Pleas of Cuyahoga County, Ohio (Court of Appeals No. 30049), petitioning the Court for a permanent injunction to enjoin Petitioners from interfering with the duly elected corporate officers in the performance of their duties in the administration of the corporate assets. This is the second of the consolidated cases now before this Honorable Court. In addition to their answer the Petitioners filed a counterclaim alleging that the officers were schismatics, heretics

and had departed from the faith, and claiming the duly elected officers were not in fact members of the church although they were certified to be so only a few days before by the court. This was substantially the same allegation made in Petitioners' prior declaratory judgment action.

Petitioners also appealed the results of the election proceedings certified by the Common Pleas Court and set forth in the assignments of error that the court in determining membership in the corporation had failed to determine whether or not certain persons were heretics, schismatics or had departed from the faith.

On December 21, 1967 the Honorable Court of Appeals of Ohio, Eighth Judicial District, after full consideration affirmed the election decree of March 30, 1967 and issued its special mandate ordering the judgment and decree of the lower court to be carried into execution. *No appeal therefrom was ever taken and that judgment and decree is final.*

Since March 30, 1967 (the date of the decree of the election), to date none of the Petitioners have paid any dues to the duly elected officers of the corporation as provided by the bylaws thereof and on the 4th day of August, 1968 Petitioners, after due notice for non-payment of dues and in strict accordance with the bylaws of the corporation provided therefor, had their membership terminated in the Church Corporation by vote of the general assembly called in meeting for the special purpose of the consideration thereof.

Thus, arises the third case (Court of Appeals No. 30059), under consideration herein styled, *Tom Simich, et al. vs. The St. Sava Serbian Orthodox Church of Cleveland, Ohio, et al., being Case No. 864,453 in the Cuyahoga County Common Pleas Court.* The petition in that case

was filed August 7, 1968 and purports to be a petition "for permanent injunction, temporary injunction and other equitable relief." That petition again in substance alleges that the duly elected officers of the church corporation are schismatics and have departed from the faith and asks that the court restrain such officers and the corporation from enforcing the expulsion of Petitioners as members of the church corporation and from using the corporate property for any purpose contrary to the decrees of the Serbian hierarchy in Belgrade, Yugoslavia.

The three cases now before this Honorable Supreme Court were consolidated by the Common Pleas Court for hearing on a motion for summary judgment filed by Petitioners. The Common Pleas Court granted Petitioners' motion for summary judgment and granted additional injunctive relief. Respondents appealed the granting of the motion for summary judgment. The Ohio Eighth District Court of Appeals reversed the Common Pleas Court and remanded the case for further proceedings according to law. Petitioners then appealed the decision of the Eighth District Court of Appeals to the Ohio Supreme Court. The Ohio Supreme Court dismissed the appeal as a matter of right and refused to certify the case for decision. Petitioners then filed the instant application for a writ of certiorari.

*It is not a fact* that the determination of facts found by the Common Pleas Court in the original case of *St. Sava et al. vs. Naperta, et al.*, "are unreversed." Petitioners' Brief, p. 10. That case was appealed on law and fact and heard de novo by the Ohio Court of Appeals which wrote an opinion (Appendix, p. 41, *infra*), and rendered judgment (Appendix, p. 46, *infra*). In so doing the Court of Appeals rejected and refused to consider evidence of ecclesiastical disputes in the determination of property

rights and the right to hold corporate office. That court stated on April 7, 1966:

> "At the outset, we again remind all parties that a man's beliefs, and his acceptance or rejection of ecclesiastical authority cannot be decided for him. By coming into a civil court only the control of buildings and material things can be effected. Such control can be used as a weapon to deepen the wounds of controversy, but of itself cannot help solve religious differences. Everyone should clearly understand that no court of civil law can restore unity to the congregation of St. Sava Church." (Appendix, p. 42, *infra*).

Counsel therefore takes serious exception with the alleged Statement of Facts submitted by Petitioners which seems to be mostly if not entirely based upon the alleged findings of the Common Pleas Court of Cuyahoga County in the *Naperta* case. Not only did the Court of Appeals in hearing the *Naperta* case de novo make its own findings of fact as found and set forth in its journal entry of October 10, 1966 (Appendix, p. 46, *infra*), but it also in its prior decision dated April 7, 1966 pointedly eliminated and struck down any reference to findings of fact or orders previously issued by the Common Pleas Court relating to a person's faith or church polity. See Appendix, p. 42, *infra*.

This refusal of the Ohio Court of Appeals in the *Naperta* case to consider ecclesiastical questions and matters of church polity was the subject of an appeal by Petitioners herein to the Ohio Supreme Court in 1966. The Motion to Certify was denied by the Ohio Supreme Court in Case No: 40577.

The trial court in the within causes later, however, appeared to accept the decision of the trial court in the *Naperta* case and refused to follow the rulings of the Ohio Court of Appeals and the Ohio Supreme Court. It erro-

neously granted the Petitioners' motions for summary judgment on the basis of the alleged findings of fact of the *Naperta* decision which the Court of Appeals said should be eliminated, were improper, and not to be considered.

## ARGUMENT.

### I. LACK OF JURISDICTION.

#### A. No "Final Judgment or Decree."

The jurisdiction of this Court to review decisions of a state court is based upon 28 U.S.C. 1257. That section permits only review of "*final* Judgments or decrees rendered by the highest court of a state." (Emphasis supplied). The judgment of the Ohio Supreme Court, for which review is sought by the Petitioners in this case is not a "final judgment or decree" within the contemplation of Section 1257.

Although this Honorable Court has stated that "(n)o self-enforcing formula defining when a judgment is 'final' can be devised", *Republic Natural Gas Co. v. Oklahoma*, 334 U.S. 62, 67 (1945), it, nevertheless, has provided ample guidance for determining the finality of a judgment for jurisdictional purposes. The rationale of the decisions rendered by this Court in regard to finality indicate that it is inappropriate to submit a federal question to the highest court in the land until a controversy is finally disposed of, thereby avoiding the possibility of piecemeal review and unnecessary abstract determination. See Boskey, *Finality of State Court Judgments Under the Federal Judicial Code*, 43 COLUMBIA LAW REVIEW 1002 (1943).

This Court has stated that a judgment or decree to be final "must terminate the litigation between the parties on the merits of the case, so that if there should be an affirmance here, the Court below would have nothing to

do but to execute the judgment or decree it had already rendered." *Bostwick v. Brinkerhoff*, 106 U.S. 3-4 (1882); see also *Gospel Army v. Los Angeles*, 331 U.S. 543, 546 (1947); *Market Street R. Co. v. Railroad Commission*, 324 U.S. 548, 551 (1945).

The judgment of the Supreme Court of Ohio in this case does *not* end the litigation between the parties. The Supreme Court of Ohio refused to review the decision of the 8th Appellate District Court of Appeals as a matter of right on the ground that there was no substantial constitutional question in existence. See Petitioners' Appendix A, p. 46. The Supreme Court of Ohio also refused to certify the case leaving the decision of the Court of Appeals unchanged. Petitioners' Appendix A, p. 46. The decision of the 8th Appellate District Court of Appeals had reversed and remanded the cause to the Common Pleas Court for further proceedings according to law. See Petitioners' Appendix A, p. 45. A judgment reversing a lower court and remanding the case for further proceedings has often been held not final by this Court. *Houston v. Moore*, 3 Wheat. 433 (U.S. 1818); *Rice v. Sanger*, 144 U.S. 197 (1892); *Hazeltine v. Central Bank*, 183 U.S. 130 (1901); *Union Mutual Life Ins. Co. v. Kirchoff*, 160 U.S. 374 (1896).

If this Court were to grant a writ of certiorari and review the judgment of the Ohio Supreme Court at this time, its decision could very well become merely advisory because Petitioners may ultimately triumph when the case is remanded to the Common Pleas Court for further proceedings. Such a premature consideration would surely be piecemeal review. This Court "ought not to pass on constitutional issues before they have reached a definitive stop." *Republic Natural Gas Co. v. Oklahoma*, 334 U.S. 62, 71 (1948).

## B. Existence of Independent and Adequate Non-Federal Grounds.

This Honorable Supreme Court has also steadfastly followed the self-imposed jurisdictional rule that it will refrain from reviewing a state court judgment based on an independent and adequate non-federal ground. *Klinger v. Missouri*, 13 Wall. 257 (U.S. 1872); *Murdock v. City of Memphis*, 20 Wall. 590 (U.S. 1875). The rule extends to situations in which a state court decision is founded upon both a federal and state ground. This Court held in *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935):

> ". . . the case is controlled by the settled rule that where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, our jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment."

The rationale behind the principle was aptly enunciated in *Herb v. Pitcairn*, 324 U.S. 117 (1945) at page 125:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate state grounds. . . . The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. *Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws our review could amount to nothing more than an advisory opinion.*" (Emphasis supplied).

The instant petition for writ of certiorari presents the classic case for imposition of the rule of jurisdictional self-restraint promulgated in the above cited cases. The judgment of the Supreme Court of Ohio rests on both a federal and an independent and adequate state ground. The original decision of the trial court from which the Respondent, herein appealed, was the granting of a motion for partial summary judgment in favor of the Petitioners. See Petitioners' Appendix A, pp. 24-25. The Eighth District Court of Appeals expressly reversed the trial court's granting of summary judgment on two distinct grounds and remanded the case for further proceedings. The judgment entry of the Court of Appeals clearly delineated the two grounds:

> "This cause came on to be heard upon the transcript, Bill of Exceptions, Assignments of Error and Briefs and arguments of counsel. This Court finds that the trial court committed prejudicial error in that *said judgment is in violation of the First and Fourteenth Amendments of the United States Constitution and contrary to the Ohio laws on summary judgment.*" (Petitioners' Appendix A, p. 45) (Emphasis supplied).

Petitioners appealed the decision of the Court of Appeals to the Supreme Court of Ohio. That Court dismissed Petitioners' appeal as of right finding no substantial constitutional question. Petitioners' Appendix A, p. 46. The Court also overruled Petitioners' motion to certify without opinion. Petitioners' Appendix A, p. 46. (Under current Ohio practice a notice of appeal filed in the Ohio Supreme Court constitutes a motion to certify and will be considered as such along with any claim of appeal as a matter of right, i.e. existence of substantial constitutional question. See Rules of Practice of the Supreme Court of Ohio, Rule II Sections 2 and 3.) The effect of the Ohio

Supreme Court's action was to withhold its jurisdiction and to leave the decision of the Court of Appeals undisturbed.

Therefore, the judgment which controls the litigation and rights of the parties at this point *is* the undisturbed judgment of the Eighth District Court of Appeals of Ohio. The federal ground upon which that judgment is based concerns a violation of the First and Fourteenth Amendments to the Constitution of the United States (see Petitioners' Appendix A, p. 40). The judgment, however, can also stand wholly upon the enunciated state ground i.e., the trial court's decision being contrary to the Ohio summary judgment laws.

The state ground exists independently of the federal ground and is, by itself, adequate to support the judgment. The finding that the trial court violated the Ohio law of summary judgment, in no way is dependent upon any federal statutes or case-law nor is it so "interwoven with the [federal ground] as not to be an independent matter. . . ." *Enterprise Irrigation Dist. v. Farmers Mutual Canal Co.*, 243 U.S. 157, 164 (1917). The Memorandum to Lawyers issued May 6, 1971 by the Eighth District Court of Appeals clearly reveals, the independent nature of the state grounds:

> "The trial court granted the motion for a partial summary judgment and found that St. Sava Serbian Eastern Orthodox Church headquartered in Belgrad, Yugoslavia, and the Eastern American and Canadian Diocese; that the Serbian Eastern Orthodox Church is hierarchical and episcopal in structure; that St. Sava is subordinate to the authority of the Serbian Eastern Orthodox Church in matters ecclesiastical in nature. The Court proceeded to grant a permanent injunction against any parties diverting or applying the property of St. Sava for any purpose other than

advancing the Serbian Eastern Orthodox faith as set out and promulgated by the Serbian Eastern Orthodox Church of Belgrade, Yugoslavia, and granted a permanent injunction against any parties carrying on action affecting the relationship of St. Sava to the Serbian Eastern Orthodox Church of Belgrade, Yugoslavia, unless said change in relationship is authorized by the ecclesiastical administrators of the Serbian Eastern Orthodox Church of Belgrade, Yugoslavia.

Pertinent parts of Revised Code Section 2311.041 (b) state:

> 'Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions of the genuineness of papers or documents, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, previously filed in the action show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . .'

In the three Court of Appeals cases before the trial court, Cases 30057, 30049 and 30059, Simich, et al., by petition or cross-petition claim St. Sava is a part of the Serbian Eastern Orthodox Church headquartered in Belgrade, Yugoslavia, and the Eastern American and Canadian Diocese and St. Sava is subordinate to the authority of Serbian Eastern Orthodox Church of Belgrade, Yugoslavia, and the Eastern American and Canadian Diocese in matters ecclesiastical.

However, the parties Milisavljevic and St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio, deny this relationship in their various pleadings. Affidavits E and A of the answer to the request for a summary judgment sworn to by Father Branko Kusonich and Milutin Ristich, president of the church corporation, say that St. Sava is not a member of the Serbian Eastern Orthodox Church of Belgrade, Yugoslavia, and the Eastern American and Canadian Diocese but

is instead a part of the Serbian Eastern Orthodox Diocese of the United States of America and Canada, an Illinois Corporate Diocese.

Therefore, the trial court committed prejudicial error in making the following two (2) findings of fact diametrically opposed to the pleadings and affidavit of the appellants:

> (1) That the defendant Church Corporation was a member of the 'Eastern American and Canadian Diocese,' one of the allegedly 'three new diocese . . .'
>
> (2) That the new defendant Church Corporation is subordinate to the authority of the Serbian Orthodox Church in Yugoslavia in matters ecclesiastical in nature.

Obviously the trial court could not find that 'there is no genuine issue as to any material fact.'

Accordingly, we reverse the judgment of the trial court, render final judgment for the appellants on the motion for partial summary judgment and remand the cause to the trial court for further proceedings according to law." Petitioners' Appendix A, p. 28-30.

The infringement of the Ohio summary judgment law by the trial court is sufficient to support the judgment rendered without consideration of the federal issue raised in the case. The legislative mandate of the Ohio summary judgment law, Revised Code 2311.041, when transgressed, demands reversal. *Stadelman v. Key GMC Truck Sales*, 22 Ohio App. 2d 161, 259 N.E.2d 520 (1970); *Leonard Insurance Agency v. Filles Motor Delivery*, 16 Ohio App. 2d 161, 242 N.E.2d 894 (1968).

If the judgment of the Court of Appeals and the judgment of the Ohio Supreme Court were to be found by this United States Supreme Court to be erroneous in regard to the federal Constitutional question, this Honorable Supreme Court would be unable to change the actual judg-

ments because they rest also on an independent and adequate state ground outside of the jurisdiction of the Court. To pass on the federal question under such a circumstance would be to render an "advisory opinion" in direct conflict with the jurisdictional philosophy established in *Herb v. Pitcairn*, 324 U.S. 117 (1945).

> "Any discussion of that question would not alter the legal relationship of the parties, since the judgment rendered by the state court would stand whether or not it correctly rules upon the federal question. All that would be accomplished by Supreme Court review would be an essay on the federal question, bearing the imprimatur of the Court but devoid of significance in the case at bar."
>
> *Henry v. Mississippi and the Adequate State Ground: Proposals for a Revised Doctrine*, 1965 Supreme Court Review 187, 201.

## II. THE DECISION BELOW IS CLEARLY CORRECT.

**The heart and core of this litigation is the right to the possession, use and control of the real and personal property of an Ohio church corporation.**

This Honorable Supreme Court in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969), and *Maryland and Virginia Eldership of the Churches of God et al. v. The Church of God at Sharpsburg*, 396 U.S. 367 (1970), plainly and clearly established the rule of law to govern such church property use disputes. The rule was first enunciated in the *Hull Memorial* case *supra* where this Court held:

> "Thus, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed

by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property and there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. Because of these hazards, the First Amendment enjoins the employment of organs of government for essentially religious purposes. *Abington v. Schempp*, 374 U.S. 203 (1963); *the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine.* Hence, States, religious organizations and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." 393 U.S. 440, 449 (1969). (Emphasis supplied).

The rule was reiterated and embellished by this Court a year later in the *Sharpsburg* case *supra*:

"To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as a civil determination of religious doctrine. Similarly, where the identity of the governing body or bodies which exercise general authority within a church is a matter of substantial controversy, civil courts are not to make the

inquiry into religious law and usage which would be essential to the resolution of the controversy. In other words, the use of the Watson [*Watson v. Jones*, 13 Wall. 679 (U.S. 1872)] approach is consonant with the prohibitions of the First Amendment only if the appropriate church governing body can be determined without the resolution of doctrinal questions and without extensive inquiry into religious polity.

'(N)eutral principles of law, developed for use in all property disputes,' Hull supra, 393 U.S. 440, 89 S. Ct. at 606, provide another means for resolving litigation over religious property. Under the 'formal title' doctrine, civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws." 396 U.S. 367, 369-370 (1970).

This unequivocal directive calling for civil abstention in religious matters was strictly heeded by the Ohio Supreme Court and Court of Appeals in the instant case. The Court of Appeals in the Supplemental Memorandum to Lawyers of June 30, 1971, adopted the exact language quoted above from the *Sharpsburg* case as the controlling rule of law applicable to the facts presented by the record to them for decision. Petitioners' Appendix A, p. 38. Following the quotation from this Honorable Supreme Court the Court of Appeals forcefully and unambiguously stated:

"There is no doubt that a controversy exists here between the parties as to which church is the appropriate church governing body and the answer *can not* be found without the resolution of doctrinal questions and without extensive inquiry into religious polity.

We are of the opinion that the answer to the question of which church the various parties are members of and which church's authority they are subject to would involve the determination of religious law and usage and require the determination of doctrinal questions and require extensive inquiry into religious polity, which inquiry is in violation of the First

Amendment to the United States Constitution." (Petitioners' Appendix A, p. 38) (Emphasis supplied).

Although the Court of Appeals was restrained from passing on the question of the proper governing church authority on the basis of the prohibition of this Honorable Supreme Court in the *Hull Memorial* and *Sharpsburg* cases, it was encouraged by those very same cases to decide the property use dispute, if possible, in accordance with neutral principles of law not involving religious considerations. 393 U.S. at 449, 396 U.S. at 370. The Court of Appeals found it possible to apply neutral principles:

> "Answers to these questions [questions of governing church authority] are not necessary to the determination of church property ownership and control since the property is in the name of an Ohio Corporation and neutral principles of law are applicable." (Petitioners' Appendix A, pp. 39-40).

The fact that the property was held in the name of an Ohio corporation known as St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio permitted the Court of Appeals to require that the trial court decide the property use dispute upon the neutral principles embodied in the Ohio corporate and property laws. Such judicial action is in strict accordance with the instructions of the *Hull Memorial* case *supra* which is quoted herein again for the sake of emphasis:

> "The Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations and individuals *must* structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions. 393 U.S. 440, 449 (1969) (Emphasis supplied).

By instructing the trial court that it was to decide this case on the basis of the neutral principles of law governing non-profit corporations, the Court of Appeals and the Supreme Court of Ohio insured the resolution of the church property dispute in the only manner available which did not require the consideration of religious doctrines. Such a decision correctly applies both the prohibitions and affirmative dictates of this Honorable Supreme Court in the *Hull Memorial* and *Sharpsburg* cases.

Petitioners argue that the decisions of the Ohio courts are based upon an erroneous interpretation of the *Hull Memorial* and *Sharpsburg* cases and that their constitutional rights were violated as a result of those decisions. Respondents, of course, take issue with the allegation of faulty interpretation, and, in addition, question the very existence of a constitutional right which can be claimed by Petitioners.

Petitioners state at p. 19 of their brief that

> "the Court of Appeals erroneously ruled that civil courts constitutionally cannot inquire into matters of church government. Both courts (Ohio Supreme Court and 8th District Court of Appeals) also erroneously assumed that 'neutral principles of law' are equated only with traditional corporate and property law concepts, thereby excluding the doctrine, enunciated in *Watson v. Jones,* as a neutral principle of law for resolution of the three cases at bar . . .
>
> Contrary to the Court of Appeals and the Supreme Court of Ohio, a review of the *Presbyterian Church* and *Church of God* cases clearly reveals that inquiry into church government and organization for the purpose of identifying the appropriate hierarchical denominational governing body has the express constitutional approval of this Supreme Court; provided that such an inquiry does not involve a determination of church doctrine and tenets."

Petitioners' characterization of the decision of the Court of Appeals is highly misleading and essentially incorrect. The Court of Appeals did not rule that civil courts constitutionally cannot ever inquire into matters of church government. That Court's ruling, more accurately stated, is that under the facts and circumstances presented to it in the record a civil court could not constitutionally inquire into matters of church government. The facts and circumstances contained in the record before the Court of Appeals evidenced a *substantial controversy* as to the church government of St. Sava Eastern Orthodox Church. Recognizing that important circumstance, the Court of Appeals necessarily and correctly followed the teaching of the *Sharpsburg* case in holding that civil courts could not inquire as to the church government of St. Sava. The *Sharpsburg* case emphatically directs that when there is a substantial controversy as to church government any inquiry concerning such church government by a civil court would necessarily require a determination of religious doctrine and tenets:

> "Similarly, where the identity of the governing body or bodies which exercise general authority within a church is a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage which would be essential to the resolution of the controversy.". 396 U.S. 367, 369-370 (1970).

Petitioners admit that "the touchstone of an unconstitutional 'extensive inquiry' is whether the same involves a determination of religious doctrine and tenet." Petitioners' brief p. 19. Such is the general rule of the *Hull Memorial* and *Sharpsburg* cases. But, this Honorable Supreme Court in the *Sharpsburg* case also instructed, as indicated above, that whenever there is substantial controversy as to church government any inquiry as to that

church government must include determinations of religious doctrine and tenet. Therefore, because the Court of Appeals was presented with a case involving a substantial controversy as to church government, it rightfully declined to make inquiry of that church government on the ground that it would require consideration of religious doctrine and tenet.

Having been prohibited by the *Sharpsburg* case from deciding the property use dispute on the basis of an inquiry into church government, the Court of Appeals, following the positive directive of the *Hull Memorial* case and the *Sharpsburg* case, instructed the trial court to decide the case upon the only "neutral principles of law" which could be utilized i.e. the non-profit corporation laws of the State of Ohio which are applicable because the church property was held in the name of on Ohio non-profit corporation. Petitioners contend that "neutral principles of law" include the *Watson v. Jones*, 13 Wall. 679 (U.S. 1872) doctrine which would permit consideration by the civil courts of the "interrelationships and legal effect of Articles of Incorporation, By-Laws, and Diocesan and Church Constitutions together with such other instruments as manifest church governmental organization." (Petitioners' brief p. 19). But, as indicated several times previously, the *Sharpsburg* case blocks *any* inquiry into church government in a case such as this where there is a substantial controversy as to the church government. 396 U.S. 367, 369-371, and especially see note 4, p. 370. For this reason the *Watson* case is clearly inapplicable.

Petitioners also predicate their request for certiorari on the ground that the action taken by the Court of Appeals and Supreme Court of Ohio has violated their constitutional rights. Petitioners seek to invoke the power

of a rather questionable constitutional right deemed to be in existence but not yet enunciated or fully defined by this Honorable Court (Petitioners' Brief p. 18). Petitioners characterize the newly discovered right at page 21 of their brief:

> "Petitioners assert that the First Amendment clauses, guaranteeing free exercise of religion and prevention of the establishment of religion, together with the Fourteenth Amendment all guarantee a Constitutional Right of church members to denominational continuity within the established framework of a particular hierarchical denominational church system." (Petitioners' Brief p. 21).

No authority is cited by Petitioners confirming the existence of such a right because no such right is in the contemplation of the First or Fourteenth Amendments of the Constitution. In fact, Petitioners claim as a right the very activity which the First Amendment attempts to prevent. In the context of a church property dispute which involves a substantial controversy as to the proper church governing body, to demand that the power of the state insure "denominational continuity" is to seek the establishment of a religion by the state. The Constitution seeks to preserve the right of men to make up their own minds in regards to religious beliefs and allegiances without state interference. *Everson v. Board of Education*, 330 U.S. 1, 11 (1947). How could the state through its courts insure "denominational continuity" without prying into the minds of its citizens to examine their religious beliefs? How could the state through its courts insure "denominational continuity" when there is a substantial controversy as to the proper governing body of a church? The mandatory response to these questions is that no right of "denominational continuity" can be guaranteed

without inquiry as to religious doctrine and tenet when there exists a controversy regarding governing church authority.

If there is a constitutional right to "denominational continuity" it only exists, as Petitioners themselves state, "within the established framework of a particular hierarchical denominational church" (Petitioners' Brief p. 21). The church property in this litigation is held by an Ohio non-profit corporation. This fact alone raises serious questions as to whether there is in fact an "established framework of a particular hierarchical denominational church." See discussion in Note, *Judicial Intervention in Disputes Over the Use of Church Property*, 75 HARV. L. REV. 1142, 1150-1160 (1964) and cases cited therein. Whether there is an established hierarchical framework to which St. Sava Serbian Eastern Orthodox Church is subject, is the very controversy which produced this litigation. To guarantee "denominational continuity" to the Petitioners when such a controversy continues would be to destroy the neutrality which the First Amendment demands and to which this Court is pledged.

> "Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine and practice. It may not be hostile to any religion or to the advocacy of no religion; and it may not aid or foster or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion and between religion and non-religion."
>
> *Epperson v. Arkansas*, 393 U.S. 97, 103-104 (1969);
> *Everson v. Board of Education*, 330 U.S. 1, 18 (1947);
> *Zorach v. Clauson*, 343 U.S. 306, 313-314 (1952).

## CONCLUSION.

For the foregoing reasons it is respectfully submitted that this petition for writ of certiorari should be denied.

Respectfully submitted,

STANLEY E. LLOYD,
*Counsel for Respondents.*

W. P. STRANGWARD,
STRANGWARD, MARSHMAN, LLOYD
& MALAGA,
*Of Counsel.*

# APPENDIX.

## DECISIONS OF COURT OF APPEALS OF CUYAHOGA COUNTY, OHIO, IN RELATED CASES.

Case No. 26957.

IN THE COURT OF APPEALS

EIGHTH JUDICIAL DISTRICT,
CUYAHOGA COUNTY.

---

SAVKO JOVANOVIC, *et al.*,

*Plaintiffs-Appellees,*

vs.

TOM SIMICH, *et al.*,

*Defendants-Appellants.*

---

### OPINION OF THE COURT OF APPEALS.

(Rendered March 22, 1966.)

DUFFEY, *J.*

This very unfortunate litigation began with a petition for an injunction in the Common Pleas Court in Cuyahoga County. The lower court denied any relief and the case is now on appeal on questions of law only. A closely related case is also before the court. Some of the evidence in this case has been qualified, even contradicted, by evidence in the other pending case. However, the decision here must be based upon the *evidence of record in this action only.* A number of matters referred to in the briefs and arguments are not of record in this action and cannot be considered.

In reviewing the evidence, it is important to note that in an appeal on questions of law only the appellate court is required to respect the factual determinations of the

trial court. Accordingly, we have carefully selected that evidence which is most favorable to appellee Simich.

In December 1962, appellant Savko Jovanovic was a member in good standing of St. Sava Serbian Orthodox Church of Cleveland, Ohio. Tom Simich was the president of the church congregation and of its executive committee. The annual meeting of the church was called for December 2, 1962, and convened. A proposed resolution was reported out of the executive committee. This resolution recited the construction of a new church, school, and rectory, the incurring of a $400,000 debt, and that the regular income and contributions to the church building fund has not been adequate. Pertinent portions of the resolution provide:

"It is Resolved:

"That every member of the Serbian Orthodox General Assembly St. Sava in Cleveland, who has not contributed for the construction of the new church, school and rectory, $500.00 or more, from 1 January 1963, beside the regular monthly dues of $1.00 pays for the payment of the above-mentioned debt $10.00 per month, until the sum of $500.00 is attained.

"It is further resolved: that a member who pays no heed to this resolution, loses all membership rights prescribed in the Constitution and By-Laws of the General Assembly.

"This resolution does not encompass that member of the General Assembly who has attained 65 years of age or more, whose monthly income is not more than $125.00, nor that member who is an invalid and in impoverished condition.

"It is further resolved that a committee be chosen of three members who will investigate and establish the condition of those members who believe that this resolution does not apply to them and to report on these to the church board.

"This resolution does not relate to those members who have already paid their investment of $500.00.

"Members who have paid in less than 500 dollars, must besides the dues only continue to pay at the rate of 10 dollars per month until the sum of 500 dollars is paid.

"Members who until today have not paid anything are requested to pay within a period of five years at the rate of 10 dollars per month beside the regular dues which is in all 11 dollars per month. The opportunity and possibility is given that everyone participate and not feel it, so to speak. Who can give more and more quickly, the better it is for the church for less interest will have to be paid on the loan.

"Members who have invested their pledges of 500 dollars are requested to help further when and as much as they can."

The resolution was adopted by a vote of 48 for and 20 against. The petition alleges that this resolution will be enforced and be used to deny membership rights, in particular the right to vote at the annual meetings of the church. The resolution has been and is being enforced. Appellant and others in the same position have been and will be denied the right to vote solely because of failure to comply with the obligations of this resolution. The prayer and petition ask that the appellee be restrained from denying appellant and others of his class membership rights and from enforcing the resolution of December 2, 1962. The reply requests such other relief as may be appropriate.

Between the December 2, 1962, meeting of the church membership and the next annual meeting, a deep religious controversy arose. In May 1963, the then Serbian Orthodox Bishop was purportedly suspended by higher ecclesiastical authority. In addition, the previous diocese for United States and Canada, incorporated as an Illinois

corporation, was also purportedly split into three dioceses. St. Sava comes within the ecclesiastical jurisdiction of one of these new dioceses, and a new bishop was purportedly appointed with jurisdiction over that diocese. This tragic controversy is not apparent in the trial court record of this case, although it is the root and stem of the controversy in the companion case No. 27520.

It is important at the outset to strongly state to both factions that the ecclesiastical controversy cannot be resolved in a court of civil law. This court is not in any respect passing upon the religious, ecclesiastical authority of any patriarch, bishop or other clerical or nonclerical person.

On the other hand, St. Sava Serbian Orthodox Church of Cleveland, Ohio, is also a corporation organized under the laws of Ohio. The manner and procedure by which it carries on its corporate activities is controlled by the statutes of Ohio, the corporation's articles of incorporation and its regulations. St. Sava has adopted a set of bylaws. This court can and will apply the civil law pertaining to corporations as established in Chapter 1702, Revised Code, and the regulations adopted by the corporation in its bylaws. There is much evidence tending to show certain customs or practices in the conduct of the church's affairs. However, in reviewing action on corporate matters as opposed to ecclesiastical affairs, the methods and procedures are established by statute and by law. In the face of a challenge in court, no custom or practice which conflicts with the prescribed corporate procedure can be valid.

In our opinion, the resolution requiring the payment of funds in addition to regular dues as adopted at the December 2, 1962, annual meeting, was not validly adopted for at least three reasons, each of which by itself would invalidate it. There was no proper quorum to do

business. It was not passed by the vote required. It constitutes an attempt to amend the corporation's bylaws and as such was not validly adopted.

The bylaws require a quorum of one-fourth of the members in good standing. Part Three, Article I, Section 14 of the bylaws. The record here does not support a finding of a quorum at the December 2, 1962, meeting.

There are three methods by which membership in the church can be obtained:

(1) All persons who were members of the church in good standing as of the day the bylaws were adopted. Part Eight, Article I, Section 1.

(2) All persons who thereafter applied and were accepted in accordance with the provisions of the bylaws Part Two, Article 1.

(3) A wife of a member who herself is Eastern Orthodox, and who becomes a member of the "Circle of Serbian Sisters." Part Two, Article II, Section 2.

Membership eligibility extends to all adults over 18. Women are eligible for full membership, including voting rights. Part Two, Article I, Sections 1 and 2. A wife may be a member without the consent of her husband.

As of December 2, 1962, there were apparently about 777 members of the church. It is not clear whether this figure included all female members, especially those qualifying under the "Serbian Sisters" exception to application requirements. Further, there is no membership book kept in the manner required by Section 1702.13, Revised Code. On the other hand, not all of the members were members in good standing on December 2, 1962, and entitled to vote. A member who has not paid his dues for three months directly preceding an assembly meeting is denied the right to vote. Part Two, Article III, Section 4 of the bylaws. In our opinion, it necessarily follows that one

who, not being exempted from dues payment, has failed to pay his dues for three or more months before a meeting is not to be counted in determining either (a) the total membership for purposes of computing the one-fourth necessary for a quorum or (b) the number present to constitute a quorum.

There were 485 members who on November 30, 1962, had paid their dues. Another 15 paid dues prior to commencement of the meeting on December 2. Additional members paid their dues prior to the actual vote on the resolution. It would also appear that, in counting the number who had paid dues, the fact that ineligibility required nonpayment for at least three months was apparently ignored. Thus the figure of 500 members in good standing with paid-up dues is the minimum as of December 2, 1962.

To this minimum of 500 dollars dues-paid members must be added those who were exempt from paying dues. These are (1) members of the Circle of Serbian Sisters, (2) persons in the Armed Services, (3) students, (4) persons who requested and were granted release from dues by the assembly. See Part Two, Article II, Sections 2 and 3 of the bylaws. There is no evidence of the number of members who would fall into the last three categories. However, there is positive evidence that on December 2, 1962, there were 150 members of the Circle of Serbian Sisters (R. 284). An earlier witness, Mrs. Simich, had testified to a rough estimate of 120 members, but she admitted that she did not actually know. On the evidence, therefore, the smallest number of members in good standing on December 2, 1962, had to be something in excess of 650.

The evidence indicates that women were not usually considered in determining the total membership in connection with the computation of the quorum requirement,

i.e., one-fourth of the members. On the other hand, women were clearly counted in determining the number of members present at a meeting. The accuracy of the testimony as to the custom of not counting women in determining the one-fourth requirement is very dubious. The church has a number of dues-paying women members, and, clearly, the dues books were the reference point in testimony as to the total membership. However, accepting the testimony at its face value, such a custom cannot prevail over the clear provisions of the corporation's bylaws. Membership qualifications depend on the bylaws, and their provisions are positive and affirmative with respect to the status of women.

Turning now to the evidence of the number present at the December 2, 1962, meeting, it is agreed that the meeting commenced with at most 112 members. (Two of these had apparently not paid their dues—R. 119.) Thereafter, members came and went, and eventually a number of "Serbian Sisters" joined the meeting. There is evidence that a second count was taken. The most extreme figures given by any witness are those of Paul Cosic. He stated that he counted one side of the hall, that he stopped counting at 73, but he estimated there may have been 15 more on his side. Mr. Cosic's testimony as to the number on the other side of the hall is very vague. Mr. Zuber's testimony supports approximately 70. Assuming, although not necessarily finding, that 161 members were present, this is not one-fourth of 650. In our opinion, even pushing the total membership down to the lowest point on the evidence and stretching the membership present to the highest point, we cannot find that a quorum as required by the bylaws was present.

The actual vote cast was insufficient. Part Three, Article I, Section 30 of the bylaws provides:

"All decisions of the Assemblies shall be brought forth by a majority vote of the members *present*. In the event there is a tie, the vote of the presiding officer shall decide. This applies in all instances of decision among the committees." (Emphasis added.)

The evidence clearly established that the resolution received a vote of 48 for and 20 against. It is, therefore, apparent that the resolution was not adopted by a majority of the members present. Perhaps in past actions the church members have accepted decisions which were made on the basis of the majority of the members present and voting. However, the bylaws and statutes of Ohio are clear. See Section 1702.22 (B), Revised Code. In the face of a legal challenge, the requirement of the majority of those present must be met.

Regardless of the vote required and of the absence of a quorum, the resolution itself constituted an allegal attempt to amend the bylaws. Appellees concede that the steps necessary to accomplish a valid amendment were not followed. Accordingly, there is no need to discuss those steps. However, appellees contend that the bylaws authorize the setting of dues for the forthcoming year at the annual meeting and that the resolution was simply such a setting of dues. We cannot agree.

The only financial obligation authorized under the bylaws is the imposition of monthly dues for one year in advance. Part Two, Article II, Section 1. A member cannot be made liable for any debt of the corporation or obligated to pay any sum other than dues. A member can, of course, make voluntary contributions. The income from dues may be expended for any proper church purpose, including the payment of the debts of the corporation. In the present case, the dues had, for many years, been set at $13—$1 monthly and $1 additional at the annual meeting.

The church then incurred a mortgage debt of some $400,000 in connection with new construction. An effort was apparently made to obtain substantial contributions from the members. The dues, income and voluntary contributions were not large enough to meet the obligations of the church. The resolution in question is the result of efforts to raise additional funds. There was clearly a belief on the part of some members that the burden was not being fairly shared.

The resolution here attempts to require the payment of a fixed sum of $500, although permitting monthly installments of not less than $10. It might be noted that the funds so derived are "earmarked," i.e., stated to be for payment of the debt rather than simply added to the church treasury. We do not doubt that dues could be raised $10 per month for one year, that this could be collected from all members, and that the proceeds could be used to pay the church debt. The point is that the present resolution was an effort to impose a specific obligation.

In addition, and perhaps more importantly, the resolution is unequal, nonuniform and retrospective in its application. The additional burden is imposed only upon those members who have not previously made gifts amounting to $500 or more. This classification of members based upon their previous voluntary donations is, when tied to membership rights, unauthorized by the bylaws. Dues are required to be set prospectively and applied equally to all members. Even if this resolution were viewed as an attempted grant of exemption from prospective dues, the bylaws do not permit an exemption based upon previous gifts. See Part Two, Article II, Sections 1, 2 and 3.

The last question presented is whether there are any internal corporate remedies that appellants were required

to fulfill before invoking court action. The pertinent provisions of the bylaws are Part Five, Article I, Sections 2 and 10:

"2. Complaints against the decisions of the Regular Annual or Special Assembly Meetings shall be made to the higher Diocesan (sic) authorities.

"10. Complaints shall be filed within thirty days of the decision in question counting from the day that the plaintiff learned of the decision and not later than one year from the day the decision was brought forth."

Before the one-year period expired, it became impossible to know who or what was the "higher Diocean (sic) authorities." In May 1963, the then diocese was purportedly split into three parts, and the then bishop purportedly suspended by ecclesiastical authority in Belgrade, Yugoslavia. Whether this would affect the *corporate* position of the Illinois corporation is an issue of law not yet resolved.

Secondly, any complaint to either of the "higher Diocean (sic) authorities" became moot. Within the one-year period, both the previous and the newly appointed bishops stated their positions on the validity of the resolution—one considering it valid, one considering it invalid. Appellees did not accept the latter ruling, and the appellants challenge the former.

Finally, the resolution in question cannot be considered a "decision" of the annual assembly. It was not adopted by the required vote, there was no quorum, and the steps necessary for an amendment to the bylaws were not followed.

Under these circumstances, we believe that the internal corporate remedy did not constitute a bar to relief in the Common Pleas Court.

Since the filing of the suit, an election of officers was held. The right to vote was based upon the resolution of December 2, 1962. It is apparent that in providing appellants with relief against the resolution, the election is also affected. While the present acting officers should continue to conduct the ordinary affairs of the corporation, a new election must be held. Rather than issue an injunction in this court, the case will be remanded to the Common Pleas Court for the granting of appropriate relief. The order of remand will include instructions to grant a permanent injunction against the enforcement of the resolution, and to oversee, by a master commissioner or otherwise, (1) the preparation of a membership book as provided by Section 1702.13, Revised Code, (2) the opportunity for all members to pay all past and current dues, based upon the previous rate of $1 per month, and (3) the call of a membership meeting and the conduct of an election.

The judgment of the Common Pleas Court will be reversed and vacated, and the case remanded with instructions.

BRYANT, P.J., and DUFFEY, J., concur.

Case No. 26957.

IN THE COURT OF APPEALS

EIGHTH JUDICIAL DISTRICT,
CUYAHOGA COUNTY.

---

SAVKO JOVANOVIC, *et al.*,

*Plaintiffs-Appellees,*

v.

TOM SIMICH, *et al.*,

*Defendants-Appellants*

---

**JOURNAL ENTRY OF THE COURT OF APPEALS.**

(Filed May 26, 1966.)

This cause came on to be heard as an appeal on questions of law upon the record, briefs and argument of counsel.

Upon consideration thereof, the Court finds error to the prejudice of appellants. The resolution adopted at the December 2, 1962, annual membership meeting of St. Sava Serbian Orthodox Church of Cleveland, Ohio, requiring the payment of funds in addition to regular dues, is invalid; appellants' rights to vote at the election of officers were legally denied; and appellants' right to appropriate equitable relief was improperly refused, all for the reasons stated in the decision of this Court dated March 22, 1966. In particular, appellants have been illegally denied the right to vote as members of the Church Corporation solely because of failure to comply with the provisions of the invalid resolution. The Court further finds that appellants have been deprived of substantial rights by the election of officers of the corporation on the basis of invalid voting restrictions. A permanent injunc-

tion should issue restraining appellees from enforcing or attempting to enforce that resolution and from using or attempting to use it as a basis for determining rights and membership in the Church Corporation. To fully effectuate appellants' rights, further equitable relief should be granted requiring that a new election of officers be held.

It is therefore ordered, adjudged and decreed that the judgment of the Court of Common Pleas of Cuyahoga County be and hereby is reversed and vacated and the cause be and hereby is remanded to that Court with instructions to:

(1) Grant a permanent injunction prohibiting the enforcement of the resolution of December 2, 1962, relating to the payment of funds in addition to regular dues, and the denial to appellants and others similarly situated of their right to vote because of their failure to comply with that resolution.

(2) Require the holding of an election of officers in accordance with the bylaws of the Church Corporation and the law of Ohio, such election to be held at such time as the Court of Common Pleas may determine to be appropriate.

(3) Oversee, by a Master Commissioner or otherwise, (a) the preparation of a membership book as provided by Section 1702.13 Revised Code, (b) the determination of individual claims to be a member or for reinstatement as a member of the Church Corporation, and (c) the call of a membership meeting and the conduct of the election.

(4) Hold such further proceedings as may be in accordance with law.

Exceptions to all parties.

Case No. 27520.

IN THE COURT OF APPEALS

EIGHTH JUDICIAL DISTRICT,
CUYAHOGA COUNTY.

---

ST. SAVA SERBIAN ORTHODOX CHURCH OF CLEVELAND, OHIO,

*Plaintiff-Appellant,*

v.

MILAN NAPERTA, *et al.*,

*Defendants-Appellees.*

---

**DECISION OF THE COURT OF APPEALS.**

(Rendered on April 7, 1966.)

DUFFEY, *J.*

This is an appeal on questions of law and fact from a judgment of the Common Pleas Court of Cuyahoga County. That court granted a permanent injunction against defendants-appellants, restraining them from claiming office in St. Sava Serbian Orthodox Church, interfering with the conduct of church officers, requiring an accounting and certain other relief.

St. Sava Serbian Orthodox Church is an Ohio corporation not for profit. The petition is in the name of the church. It alleges, in essence, that defendants-appellants illegally claim to hold corporate offices and are illegally acting in various ways to interfere with the conduct of church affairs. A general denial and so-called "cross-petition" were filed. The cross-petition names as defendants certain individuals, alleges that defendants-appellants are the true, lawful officers of St. Sava Church, and that the new defendants are the ones who illegally

claim and are attempting to exercise corporate authority in the church.

At the outset, we again remind all parties that a man's beliefs, and his acceptance or rejection of ecclesiastical authority, cannot be decided for him. By coming into a civil court, only the control of buildings and material things can be effected. Such control can be used as a weapon to deepen the wounds of controversy, but of itself cannot help solve religious differences. Everyone should clearly understand that no court of civil law can restore unity to the congregation of St. Sava Church.

In our opinion, the petition is well taken and the church is entitled to injunctive relief against the defendants-appellants. The cross-petition is not well taken and must be dismissed.

An election of officers was held at the regular annual meeting on December 2, 1962. That election was apparently proper and has never been challenged. Accordingly, it is the beginning point in the statement of the present status of the church.

The executive committee members are "trustees" of the corporation within the meaning of Section 1702.01, Revised Code. There is no provision in the corporate articles or regulations (bylaws) as to the effect of an invalid election or failure to hold an election of officers as that would relate to the term of previously elected officers. Therefore, under Section 1702.28, Revised Code, a trustee (executive committee member) holds office "until his successor is elected."

At the 1962 meeting, a resolution was purportedly adopted imposing an obligation upon some members to pay up to $500. That resolution was the subject of litigation in case No. 26957. In that case this court held the resolution invalid. The entire record of that case was

added to the evidence in this case by stipulation and grant of leave, pursuant to Section 2505.21, Revised Code. Upon review of all the evidence before us in the present case, we again determine that the resolution is invalid.

The 1962 resolution was used as the basis for determining voting rights at the next meeting held January 26, 1964. The election held at that meeting was therefore invalid. Special meetings were purportedly held on February 23, 1964, and March 8, 1964. Under Part Three, Article I of the bylaws, a special meeting must be called in the same manner as a regular meeting. The requirements include a written notice or invitation, and the notice must be at least thirty days before the date of the meeting. See Part Three, Article I, Section 3, and Section 2E) and F). A shorter notice period may be set by the executive committee. Part Three, Article I, Section 3B).

The February 23, 1964, meeting was improperly called for a variety of reasons, including lack of written notice. The March 8, 1964, meeting was invalid for a variety of reasons, including the lack of a 30-day notice or permission for a shorter notice.

Accordingly, it follows that the persons elected at the meeting of December 2, 1962, continue to hold office, and were authorized to act upon behalf of the corporation, including the filing of this suit. The evidence supports the Common Pleas Court findings that defendants-appellants have illegally and improperly interfered with the conduct of the affairs of the church. An injunction, essentially in the form of the *operative* provisions of the entry below, will be granted. The entry should exclude references to the January 26, 1964, election, and the references in part (b) and (c) on page eight of the Common Pleas entry.

For the reasons already stated, defendants-appellants do not hold office in the corporation. The underlying basis of the entire "cross-petition" against the new defendants is therefore unsupported on its merits.

The propriety of the "cross-petition" rests upon Section 2309.16, Revised Code. That section provides in part:

> "A counterclaim is a cause of action existing in favor of one or more defendants against one or more plaintiffs or one or more defendants, or both, between whom a several judgment might be had in the action, and arising out of the contract or transaction set forth in the petition as the foundation of the plaintiff's claim, or connected with the subject of the action or arising out of contract or ascertained by the decision of a court."

Since a counterclaim presupposes a pending action, it is apparent that the references to plaintiffs and defendants refer to the parties to the *original proceeding*. A counterclaim must, therefore, be a cause of action in one of the parties to the original proceeding against one of the parties to the original proceeding. Of course, if such a cause of action is asserted by way of counterclaim, and that cause of action requires the addition of a new party, the new party may be added. Sections 2309.17 and 2309.18, Revised Code. However those statutes permit the addition of a new party to a "counterclaim" and are, therefore, controlled by the basic counterclaim statute, Section 2309.16, Revised Code. On the other hand, our use of the word "original" is not intended to limit the operation of the statute to claims against parties originally *named*. There may be a person not named originally who must or may be joined as a party plaintiff or defendant to the original proceeding. If properly made a party, such

a person falls within the counterclaim statute, and a claim may be asserted against him by any other party—subject to the other limitations relating to the same transaction, subject of action, etc., found in the statute.

In the present case, the counterclaim does not involve a claim against the corporation or against any of the original parties defendants to the corporation's action. It constitutes an attempt at third-party practice. While such joinder of causes and parties would frequently facilitate litigation and avoid unnecessary duplication, it has not yet been adopted in Ohio.

An entry granting an injunction in accordance with the petition and this decision, and ordering the dismissal of the counterclaim, may be submitted.

BRYANT, *P.J.*, and DUFFEY, *J.*, concur.

Case No. 27520.

IN THE COURT OF APPEALS

EIGHTH JUDICIAL DISTRICT,

CUYAHOGA COUNTY.

---

ST. SAVA SERBIAN ORTHODOX CHURCH OF CLEVELAND, OHIO,

*Plaintiff-Appellant,*

v.

MILAN NAPERTA, *et al.*,

*Defendants-Appellees.*

---

**JOURNAL ENTRY OF THE COURT OF APPEALS.**

(Entered October 10, 1966.)

This cause came on to be heard upon an appeal on questions of law and fact, the original papers, transcript, transcript of the docket and journal entries in the Court of Common Pleas of Cuyahoga County, Ohio, and briefs, and was argued by counsel for both Appellant and Appellee and the same was submitted to this Court.

UPON CONSIDERATION WHEREOF this Court finds:

1. That St. Sava Serbian Orthodox Church of Cleveland, Ohio, is an Ohio non-profit corporation.

2. That an election of officers was held at the regular annual meeting on December 2, 1962, and that election was proper and has never been challenged.

3. That since the resolution passed at the December 2, 1962 meeting has been held invalid by this Court in Case No. 26957, and we again determine it to be invalid here, and since that resolution was made the basis of voting rights at the January 26, 1964 meeting, it follows

that the election held at the January 26, 1964 meeting was invalid.

4. That the special meetings of February 23, 1964 and March 8, 1964, are invalid because of lack of notice required under the church corporation code of regulations (by-laws) and for other reasons.

5. That the officers of the church, elected at the December 2, 1962 meeting are the only presently valid officers of the church and shall so remain until their successors are elected, pursuant to Section 1701.28 Revised Code and the by-laws of the St. Sava Serbian Orthodox Church of Cleveland, Ohio; and until that time those officers shall be authorized to continue acting on behalf of the corporation as they have been in the past.

6. That Defendants-Appellants have illegally and improperly interfered with the conduct of the affairs of the church; that Defendants-Appellants do not hold office in the church corporation; that the Petition of Plaintiff is well taken and the church is therefore entitled to injunctive relief against Defendants-Appellants; and that the Cross-Petition of Defendants-Appellants is not a claim against the corporation nor against any of the original parties defendants, pursuant to Section 2309.16, Revised Code, and as such is not well taken and must be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Petition of Plaintiff is well taken and Plaintiff is entitled to relief; that Defendants are not entitled to the relief prayed for in their Cross-Petition and it is accordingly dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants, Milan Naperta, Dobrosav Milisavljevic, Zivorad Bogojevic, Alex Matic, Boris Colich, Paul Yovanovic, Arsa Mandic, Savko Jovanovic, John Milovano-

vich, Gligorije Djuric, Vojislav Blagojevic, Stojan Stojanovic, Vladimir Lazukic, Vlastimir Vulich, Vladimir Mitic, Risto Janjic, Rajko Stijovic, Milenko Markovic, Vlajko Pukic and Radoslav Nedeljkovic, the several members of their families and all other members of St. Sava Serbian Orthodox Church who subscribe to their past actions and conduct be, and each of them hereby is, perpetually enjoined (a) from interfering in any manner whatsoever with the lawful conduct of the administration of such church by the present officers and committeemen or their successors, (b) from any interference with the services of worship in said church, (c) from inciting, encouraging or participating in any disorder or riotous conduct in or around or in the immediate vicinity of said church and its appurtenances, (d) from causing or encouraging any damage to any of the property of said church, and (e) from threatening or doing bodily harm to any of the new defendants in their capacities as members of the Executive Committee, the Auditing Committee during their incumbency or otherwise; provided, however, that defendants, individually are not hereby restrained from worshipping in said church or from exercising the rights of membership therein in accordance with the by-laws thereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants and each of them, the several members of their families and all other members of St. Sava Serbian Orthodox Church who subscribe to their past actions and conduct be, and they hereby are, perpetually enjoined from in any manner representing or holding themselves out to be and acting as the duly elected and acting officers and committeemen of said church until and unless they or any of them shall accede to such place by an election lawfully held and conducted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants and each of them render an accounting within thirty (30) days from the filing hereof of any and all moneys or other property, if any, received by them from any source for and on behalf of plaintiff church during the period from February 23 to and including March 8, 1964; and that the defendants within five (5) days take such steps and actions as may be necessary to relieve and release the frozen condition of the bank account or accounts of St. Sava Serbian Orthodox Church with the Cleveland Trust Company in favor of the plaintiff and the new parties defendants.

To all of which Defendants-Appellants, by counsel, except.

Case No. 27520.

IN THE COURT OF APPEALS

EIGHTH JUDICIAL DISTRICT.
CUYAHOGA COUNTY.

ST. SAVA SERBIAN ORTHODOX CHURCH OF CLEVELAND, OHIO,

*Plaintiff-Appellant,*

v.

MILAN NAPERTA, *et al.*,

*Defendants-Appellees.*

**JOURNAL ENTRY NUNC PRO TUNC OF THE COURT OF APPEALS.**

This cause came on to be heard and the court being duly advised finds that the entry of October 10, 1966, does not clearly reflect the intention of the court as shown by its opinion, with reference to the persons presently authorized to hold office in, and exercise the powers of the church corporation.

The court finds, and the parties agree, that the following persons were elected at or appointed as a result of the church meeting of December 2, 1962, to the following designated offices:

Executive Committee

| | |
|---|---|
| Tom Sifnich | President |
| George Borato | Vice President |
| Branko Uzelac | Vice President |
| Djuro Majstorovic | Secretary |
| Michael Zubel | Treasurer |
| Alexander Zugich | Fin. Secretary |
| Stojan Stojanovic | Vestryman |
| Vlada Lazukic | Vestryman |

| | |
|---|---|
| Ranko Majstorovic | Vestryman |
| Vlada Alexsandrovic | Vestryman |
| Tode Cosic | Vestryman |
| Gligorije Djuric | Vestryman |
| Pavle Cosic | Committeeman |
| Alexander Matic | Committeeman |
| Pavle Jovanovic | Committeeman |

Audit Committee

| | |
|---|---|
| Mile Djakovich | |
| Nikola Vurdelja, | deceased, Risto Janic appointed to fill vacancy |
| Dragan Cupkovich | |
| Branko Uscumljic | |
| Dusan Yovich | |

The court further finds that except as stated in this entry, the defendants-appellants do not now hold office in the church corporation, and are not now entitled to exercise the powers of the various offices, and should be enjoined from any illegal interference with the conduct of the affairs of the church.

Wherefore, it is ordered that the persons stated be and are hereby, authorized to exercise the powers granted to the designated offices by the statutes of Ohio and the bylaws of the corporation until such time as their successors are duly elected, but subject to the order of any court having jurisdiction of the parties or the corporation.

It is further ordered that except as the persons named herein are in the exercise of the authority granted by this entry, the defendants-appellants shall continue to be subject to the terms of the injunction provided by the entry of October 10, 1966.

This entry is made nunc pro tunc, modifying and correcting the entry of October 10, 1966.

## PERTINENT PORTIONS OF CHURCH BY-LAWS.

By Laws
of the
St. Sava Serbian Eastern Orthodox Church
of Cleveland, Ohio

* * * * *

### ARTICLE II

Objectives and Purposes

1. The objectives and purposes of the Church Congregation shall be:

(B) To spread and foster love and respect; for the Serbian Orthodox people, the people of the United States of America, the Constitution of the United States and the Democratic-American way of life.

* * * * *